RESOLUTIONS
AND
DECISIONS
OF
Divers *Practicall Cases* of
CONSCIENCE
In continuall Use amongst Men,

Very necessary for their Information and Direction in these evill Times.

In foure Decades.

The Third Edition, with some ADDITIONALLS.

By Jos: HALL, B. *Norwich.*

LONDON,
Printed by *R. Hodgkinson*, and *F. Grismond*, 1654.

IGIES REVERENDI DOM
HALL NORWICI EPISCOPI
epresents the Forme, where dwells
nothing but that Mind excells.
e, Learning, Wit, there Grace & Love
he rest: enough to prove
ard Conscience of this Time,
Name of BISHOP is no Crime

RESOLUTIONS
AND
DECISIONS
OF
Divers Practical Cases of
CONSCIENCE
In Conjugal Life among Men,
Resolved by Scripture
and Orthodox Divines.

The third Edition, with divers
ADDITIONALS.

LONDON,
Printed by R. Hodgkinson, and
R. C. Dwnial. 1694.

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1654

To the READER.

OF all *Divinity* that part is most usefull, which determines cases of Conscience; and of all cases of Conscience the Practicall are most necessary; as action is of more concernment than speculation: and of all Practicall Cases those which are of most cōmon use are of so much greater necessity &

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benefit to be resolved, as the errors thereof are more universall; and therefore more prejudiciall to the society of mankind: These I have selected out of many; and having turned over divers Casuists, have pitch't upon these Decisions, which I hold most conformable to enlightened reason, and religion: sometimes I follow them, & sometimes I leave them for a better Guide.

In

In the handling of all which, would I have affected that course, which *Seneca* blames in his *Albucius*, to say all that might be spoken, I could easily have been more Voluminous, though perhaps not more satisfactory. If these lines meet with different judgments, I cannot blame either my self, or them. It is the opinion of some Schoolmen (which seems to be made good by that

inſtance in the Prophet *Daniel**) that even the good Angels themſelves may holily vary in the way, though they perfectly meet in the end. It is farre from my thoughts to obtrude theſe my Reſolutions as peremptory, and magiſteriall upon my Readers, I onely tender them ſubmiſſely, as probable adviſes to the ſimpler ſort of Chriſtians;

*) Dan. 10. 13, 20, 21. 11. 1.

and

and as matter of grave censure to the learned.

May that infinite Goodnesse to whose only glory I humbly desire to devote my selfe and all my poore indeavours, make them as beneficial, as they are welmeant to the good of his Church, by the unworthiest of his Servants

Higham near *Norwich*,
March 29. 1650.

J. H. B. N.

To the Reader.

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I Have perused these foure Decades of Practicall Cases of Conscience with much satisfaction and delight, and finde them to be, in respect of their subject matter, so profitable, necessary and daily usefull; and so piously, learnedly and judiciously discussed and resolved, that they seem unto me best, though they come last, (like the Wine in the marriage feast made sacred by Christs divine presence and miracle) and therefore doe well deserve (amongst many other the divine dishes and delicacies, wherewith this right reverend, pious and learned Author hath plentiously furnished a feast for the spirituall nourishment and comfortable refreshing of Gods guests) both the approbation and commendation of all, and my selfe amongst the rest, though unworthy to passe my censure on such a subject.

John Downame.

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John Downame.

RESOLUTIONS.

The first Decade.

Cases of Profit and Trafick.

CASE I.

Whether is it lawfull for me to raise any profit by the loane of money?

You may not expect a positive answer either way: Many circumstances are considerable ere any thing can be determined.

First, who is it that borrowes? A poore neighbour that is constrained out of neede? or a Merchant that

takes up money for a freer trade? or a rich man that layes it out upon superfluous occasions?

If a poore man borrow out of necessity, you may not expect any profit for the loane: (*Deuteronomy* 15. 7, 8, 9.) To the pooreſt of all we muſt give, and not lend: to the next ranke of poore we muſt lend freely; but if a man will borrow that money (which you could improve) for the enriching of himſelfe; or out of a wanton expence will be laying out that which might be otherwiſe uſefull to you, for his meere pleaſure, the caſe is different; for God hath not commanded you to love any man more then your ſelfe; and there can be no reaſon why you ſhould vail your owne juſt advantage to another mans exceſſe.

Secondly, upon what termes doe you lend? whether upon an abſolute compact for a ſet increment, (what ever

ever become of the principall or upon a friendly truſt to a voluntary ſatisfaction according to the good improvement of the ſumme lent? The former is not ſafe, and where there hath been an honeſt endeavour of a juſt benefit diſappointed either by unavoidable caſualty, or force, may not be rigorouſly urged, without manifeſt oppreſſion. The latter can bee no other then lawfull: and with thoſe that are truly faithfull and conſcionable, the bond of gratitude is no leſſe ſtrong then that of law and juſtice.

Thirdly, if upon abſolute compact; is it upon a certainty, or an adventure? for where you are willing to hazard the principall, there can be no reaſon but you ſhould expect to take part of the advantage.

Fourthly, where the trade is ordinarily certaine, there are yet farther conſiderations to be had: to which

ſhall make way by theſe undenyable grounds.

That the value of moneys or other commodities is arbitrable acccording to the ſoveraigne authority and uſe of ſeverall Kingdomes and Countries.

That whatſoever commodity is ſaleable, is capable of a profit in the loane of it; as an horſe, or an oxe, being that it may be ſold, may be let out for profit.

Money it ſelfe is not onely the price of all commodities in all civill Nations, but it is alſo, in ſome caſes, a trafiqueable commodity: the price whereof riſes, and falls in ſeverall countries upon occaſion; and yeeldeth either profit or loſſe in the exchange.

There can be no doubt therefore but that money thus conſidered, and as it were turned merchandiſe, may be bought and ſold, and improved to a profit.

But

But the maine doubt is, whether money meerely conſidered as the price of all other commodities, may be let forth for profit; and be capable of a warrantable increaſe. For the reſolving whereof be it determined,

That all uſury, which is an abſolute contract for the meere loane of money, is unlawfull both by law naturall, and poſitive, both divine and humane.

Nature teacheth us that metals are not a thing capable of a ſuperfœtation; that no man ought to ſet a price on that which is not his owne time: that the uſe of the ſtock once received, is not the lenders, but the borrowers; for the power, and right of diſpoſing the principall, is by contract transferred for the time to the hands of him that receives it; ſo as hee that takes the intereſt by vertue of ſuch tranſaction, doth but in a man-

nerly and legall fashion rob the borrower.

How frequent the * Scripture is in the prohibition of this practice, no Christian can bee ignorant: And as for humane lawes raised even from the meere light of Nature amongst Heathen Nations, how odious, and severely interdicted usurary contracts, have been in all times, it appeares sufficiently by the Records which wee have of the Decrees of (a) *Egypt*, of *Athens*, of *Rome*; and not onely by the restraint of the Twelve Tables, and of *Claudius* and *Vespasian*; but by the absolute forbiddance of many popular statutes condemning this usage: *Tiberius* himselfe, though otherwise wicked enough, yet would rather furnish the Bankes with his owne stock, to bee freely let out for

* Exod. 22. 25. Levit. 25. 36, 37. Deut. 23. 19, 20. Nehem. 5. 7. Psal. 15, 5. Prov. 28, 8. Ezek. 18. 8.
(a) Vid. Alexand. ab Alexand. Gen. dierum l. 1. c. 7.

three

three yeeres to the Citizens, upon onely security of the summe doubled in the forfeiture, then he would endure this griping & oppressive transaction: And how wise *Cato* drove out all usurers out of *Sicilie*, and *Lucullus* freed all *Asia* from this pressure of Interest, History hath sufficiently recorded.

As for Lawes Ecclesiasticall, let it be enough that a* Councel hath defined, that to say usury is not a sinne, is no better then heresie: and in succeeding times how liable the usurer hath ever been to the highest censures of the Church; and how excluded from the favour of Christian buriall, is more manifest then to need any proofe.

Secondly, however it is unlawfull to covenant for a certaine profit for the mere loane of money, yet there may be, and are circumstances ap-

* Concil. Viennens.

pending to the loane, which may admit of some benefit to be lawfully made by the lender for the use of his money; and especially these two, the losse that he sustaines, and the gaine that he misses, by the want of the summe lent: For what reason can there be, that to pleasure another man, I should hurt my selfe, that I should enrich another by my owne losse?

If then I shall incur a reall losse or forfeiture by the delayed payment of the summe lent, I may justly look for a satisfaction from the borrower; yea if there be a true danger of losse to me imminent, when the transaction is made, nothing hinders but that I may by compact make sure such a summe as may be sufficient for my indemnity; And if I see an opportunity of an apparent profit that I could make fairely by disbursing of such a summe *bona fide*, and another

ther that hath a more gainefull bargaine in chace ſhall ſue to me to borrow my money out of my hand for his owne greater advantage, there can be no reaſon why in ſuch a caſe I ſhould have more reſpect to his profit, then my owne; and why ſhould I not even upon pact, ſecure unto my ſelfe ſuch a moderate ſumme as may be ſomewhat anſwerable to the gaine which I doe willingly forgoe, for his greater profit? Since it is a true ground which *Leſſius* (with other Caſuiſts) maintains againſt *Soto* and *Durand*, that even our hopes of an evident commodity are valuable, and that no leſſe then the feares of our loſſe.

Shortly, for the guidance of our either caution, or liberty in matter of borrowing, and lending, the onely Cynoſure is our *Charity*; for in all humane and civill acts of Commerce, it is a ſure rule, That what-

soever is not a violation of Charity cannot be unlawfull, and whatsoever is not agreeable to Charity can be no other then sinfull: And as Charity must be your rule, so your selfe must be the rule of your Charity; Looke what you could wish to be done to you by others, doe but the same to others, you cannot be guilty of the breach of Charity: The maximes of Traffique are almost infinite; onely Charity (but ever inseparable from Justice) must make the application of them; That will teach you that every increase by loane of money is not usurary; and that those which are absolutely such, are damnable: that will teach you to distinguish betwixt the one improvement of loane, and the other; and will tell you that if you can finde out a way, whether by loane, or sale, to advance your stock, that may be free from all oppression, and extortion; and beneficiall as well

well to others, as to your ſelfe, you need not feare to walke in it with all honeſt ſecurity: but in the meane time take good heed that your heart beguile you not in miſ-applications; for we are naturally too apt out of our ſelf-love to flatter our ſelves with faire glozes of bad intentions, and rather to draw the rule to us, then our ſelves to the rule.

But whiles I give you this ſhort ſolution, I muſt profeſſe to lament the common ignorance, or miſtaking of too many Chriſtians, whoſe zeal juſtly cryes downe uſury as a moſt hatefull and abominable practice, but in the meane time makes no bones of actions no leſſe biting and oppreſſive: they care not how high they ſell any of their commodities, at how unreaſonable rates they ſet their grounds, how they circumvent the buyer in their bargaines, and thinke any price juſt, any gaine lawfull that they can

make

make in their markets: not considering that there is neither lesse, nor lesse odious usury in selling and letting, then there is in lending: It is the extortion in both that makes the sinne; without which the kind or termes of the transaction could not be guilty. Surely it must needs be a great weaknesse to think that the same God who requires mercy and favour in lending, will allow us to be cruell in selling; Rigour and excesse in both equally violates the law of commutative Justice, equally crosses the law of Charity: Let those therefore that make scruple of an usurious lending, learne to make no lesse conscience of a racking bargaine; otherwise their partiall obedience will argue a grosse hypocrisie; and they shall prove themselves the worst kinde of what they hate, usurers: For in the ordinary loan usury, the borrower hath yet time to boot for his money; but here the

the buyer payes downe an exceſſive intereſt, without any conſideration at all, but the ſellers cruelty. For the fuller clearing of which point, whereas you aske

Case II.

Whether may I not ſell my wares as deare as I can, and get what I may of every buyer?

I anſwer,

THere is a due price to be ſet upon every ſaleable commodity, elſe there were no commerce to be uſed among men: For if every man might ſet what rate he pleaſes upon his lands or goods, where ſhould he finde a buyer? ſurely nothing could follow but confuſion, and want, for mere extremity muſt both make the market and regulate it.

The due price is that which cuts equally

equally and indifferently betwixt the buyer and seller; so as the seller may receive a moderate gaine, and the buyer a just penny-worth.

In those countries wherein there is a price set by publique authority upon all marketable commodities, the way of commerce is well expedited, and it is soone and easily determined, that it is meete men should be held close to the rule.

But where all things are left to an arbitrary transaction, there were no living, if some limits were not set to the sellers demands.

These limits must be the ordinary received proportion of price current in the severall countries wherein they are sold; and the judgement of discreet, wise, experienced and unconcerned persons; and the well-stated conscience of the seller.

If men shall wilfully run beyond these bounds, taking advantage of the

the rareneſſe of the commodity, the paucity or the neceſſity of the buyers to enhance the price to an unreaſonable height, they ſhall be guilty of the breach of charity, and in making a ſinfull bargaine purchaſe a curſe.

Not that a man is ſo ſtrictly tyed to any others valuation, as that hee may not upon any occaſion aske or receive more then the common price; or that if the market riſe he is bound to ſit ſtill: There may be juſt reaſon upon a generall mortality of cattle to ſet thoſe beaſts that remaine at an higher rate, or upon a dearth of graine, or other commodities, to heighten the price; but in ſuch caſes wee muſt bee ſo affected as that wee grudge to our ſelves our owne gaine, that wee bee not in the firſt file of enhancers, that wee ſtrive to be the loweſt in our valuation, and labour what we may to bring downe the market; alwaies putting our ſelves in our con-

conceits into the buyers roome; and bethinking how we would wish to be dealt with, if we were in his cloathes.

It is lawfull for the seller in his price to have regard not to his rents and disbursements onely, but to his labour, and cost, to his delay of benefit, to his loss in managing, to his hazard or difficulty in conveyance; but all these in such moderation, as that he may be a just gainer by the bargaine: not setting the dice upon the buyer; not making too much haste to be rich, by the secret spoiles of an oppressed neighbour.

Those things whose end is onely pleasure or ornament, as a Jewel, an Hauke, or an Hound, can admit of no certaine value; the owners affection must estimate it, and the buyers desire must make up an illimited bargaine; but even in these, and all other commodities that carry the face of unnecessary, Conscience must be the

Clarke

Clarke of the Market; and tell us that we must so sell, as we could be willing to buy. From all which it followes,

That the common maxime current * in the shops of trade, that things are so much worth as they can be sold for; and those ordinary rules of chapmen, that men who are masters of their wares may heighten their prices at pleasure, and get what they can out of all commers; and what ever they can get out of the simplicity, or necessity of the buyers, is lawfull prize, are damnably uncharitable and unjust.

It were an happy thing, if as it is in some other well ordered nations, there were a certaine regulation of the prices of all commodities by publique authority, the wisdome whereof knows how to rise and fall accor-

* Dom. Sot. de Justit. & Jure l. 6. quæst. 2. Artic. 3. tradit hoc ut Axioma Jurisconsultorum.

ding

ding to the necessity of the occasion; so as the buyer might be secured from injury, and the seller restrained from a lawlesse oppression. But where that cannot be had, it is fit that Justice and Charity should so far overrule mens actions, that every man may not be carryed in matter of contract, by the sway of his owne unreasonable will, and be free to carve for himselfe as he lists of the buyers purse: every man hath a bird in his bosome that sings to him another note.

A good conscience therefore will tell you that if (taking advantage of the ignorance or unskilfulnesse of the buyer) you have made a prey of him by drawing from him double the worth of the commodity sold, you are bound to make restitution to him accordingly, and in a proportion so, in all the considerable summes which you shall have by your false protesta-

tions,

tions, and oathes, and plausible intimations wrought out from an abused buyer; above that due price which would make you a just and rightly moderated gainer: For assure your selfe, all that you willingly doe this way is but a better-coloured picking of purses; and what you thus get is but stolne goods varnisht over with the pretence of a calling, and will prove at the last no other then gravel in your throat.

Case III.

Whether is the seller bound to make knowne to the buyer the faults of that which he is about to sell?

IT is a question that was long since disputed betwixt the Heathen Sages, *Antipater* and *Diogenes*, as *Cicero** informes us: with whom *Cato*

* Tul. de Offic. l. 3.

so

so decides it as that his judgement may justly shame and condemne the practice of too many Christians: For a full answer, due consideration must be had of divers circumstances.

First, what the nature and quality of the fault is; whether it be sleight and unimporting; or whether such as may vitiate the thing sold, and render it either unusefull or dangerous to the buyer: or againe, whether the fault be apparent, or secret: both these doe justly vary the case: sleight and harmeles faults may bee concealed without injustice; main and importing must be signified: if apparent defects bee not discerned by the buyer hee may thanke himselfe; secret faults knowne onely to the seller, (such as may be prejudiciall to the buyer) ought not to be concealed, or if they be concealed so, as that the buyer payes for it as sound, and perfect, binde the seller in conscience, either

either to void the bargaine, or to give juſt ſatisfaction.

Secondly, it would be conſidered, whether the buyer before the bargaine be ſtricken, hath required of the ſeller to ſignifie the faults of the commodity to be ſold, and out of a reliance upon the ſellers fidelity and warrant, hath made up the match: or whether in the confidence of his owne skill, without moving any queſtion, hee enter reſolutely, *(de bene eſſe)* upon the bargained commodity: If the former, a double bond lyes upon the ſeller to deale faithfully with the buyer, and therefore to let him know the true condition of the thing expoſed to ſale, that ſo either he may take off his hand; or if he ſhall ſee that notwith ſtanding that defect it may ſerve his turne, he may proportion the price accordingly: otherwiſe he ſhall be guilty (beſides falſhood and oppreſſion) of perfidiouſneſſe.

ouſneſſe. But if the buyer will peremptorily rely upon his owne judgement, and as preſuming to make a gaine of that bargaine (which the ſeller out of conſcience of the imperfection, ſets (as hee ought) ſo much lower as the defect may bee more disadvantageous to the buyer) will goe through with the contract, and ſtand to all hazards, I ſee no reaſon why the ſeller may not receive the price ſtipulated; but withall if the match may carry danger in it to the buyer, (as if the horſe ſold bee ſubject to a perilous ſtarting, or ſtumbling; the houſe ſold have a ſecret crack that may threaten ruine; or the land ſold be lyable to a litigious claime which may be timely avoyded) the ſeller is bound in conſcience (at leaſt after the bargaine) to intimate unto the buyer theſe faulty qualities, that hee may accordingly provide for the prevention of the miſchiefe that may enſue.

But

But if the ſeller ſhall uſe art to cover the defects of his commodity, that ſo he may deceive the buyer in his judgement of the thing bargained for, or ſhall mix faulty wares with ſound, that they may paſſe undiſcovered, he is more faulty then his wares, and makes an ill bargaine for his ſoule. In this, ſhortly, and in all other caſes that concerne trade, theſe univerſall rules muſt take place. That it is not lawfull for a Chriſtian chapman to thrive by fraud. That hee may ſell upon no other termes then he could wiſh to buy. That his profit muſt be regulated by his conſcience, not his conſcience by his profit. That he is bound either to prevent the buyers wrong, or if heedleſly done, to ſatisfie it. That he ought rather to affect to be honeſt, then rich: And laſtly, that as he is a member of a community both civill and Chriſtian, he ought to be tender of another

another mans indemnity no lesse then of his owne.

Case IV.

Whether may I sell my commodities the dearer for giving dayes of payment?

THere is no great difference betwixt this case, and that of loane, which is formerly answered; save that there money is let, here commodities money-worth; here is a sale, there a lending; in the one a transferring of the right and command for the time; in the other perpetually; but the substance both of the matter and question is the same; for in both there seemes to be a valuation of time: which whether in case of mutuation, or sale, may justly be suspected for unlawfull.

For

For anſwer;

There are three ſtages of prices acknowledged by all Caſuiſts; the higheſt, which they are wont to call Rigorous; the meane, and the loweſt; If theſe keep within due bounds, though the higheſt be hard, yet it is not unjuſt, and if the loweſt be favorable, yet it is not alwayes neceſſary.

If then you ſhall proportion but a juſt price to the time, and worth of your bargaine, ſo as the preſent ſhall paſſe for the eaſieſt price, ſome ſhort time for the meane, and the longer delay for the higheſt, I ſee not wherein, all things conſidered, you doe offend.

And certainly to debarre the contract of a moderate gaine for the delay of payment upon moneths prefixed, were to deſtroy all trade of merchandiſe: For not many buyers are furniſhed with ready money to

buy their wares, at the Port; nor could the sellers make off their commodities so seasonably, as to be ready for further traffique, if they must necessarily be tyed to wait upon the hopes of a pecuniary sale; and not left to the common liberty of putting them over to whole-sale men upon trust; who upon a second trust distribute them to those, that vent them by retaile, both for dayes agreed upon: By which meanes the trade holds up, and the common-wealth enjoyes the benefit of a convenient and necessary commerce.

A practice that is now so habituated amongst all nations into the course of trade, that it cannot well consist without it. So as nothing is more ordinary in experience than that those, who are able to pay downe ready money for their wares, know to expect a better penny-worth, then those that runne upon trust: And

there

there may be just reason for this difference; For the present money received enables the seller to a further improvement of his stock, which lyes for the time dead in the hands that take day for their payment.

So then, it is not mere time that is here set to sale, which were odious in any Christian to bargaine for; but there are two incidents into this practice which may render it not unwarrantable. The one is the hazard of the summe agreed upon: which too often comes short in the payment: whiles those subordinate chapmen, into whose hand the grosse summe is scattered, turne bankrupts, and forfeit their trust; so as no small losse is this way commonly sustained by the confident seller; in which regard we are wont to say justly, that One bird in the hand is worth two in the wood. The other is the cessation of that gaine which the merchant might

in the meane time have made of the ſum differred; which might in likelihood have beene greater then the proportion of the raiſed price can amount unto; to which may be added the foreſeene probability of the raiſing of the market in the intervall of payment: the profit whereof is precluded by this meanes to the ſeller; whoſe full engagement takes him off perhaps from a reſolution to have reſerved thoſe commodities in his own hands, in expectation of an opportunity of a more profitable utterance, had not the forwardneſſe of the buyer importuned a prevention.

Upon theſe conſiderations, if they be ſerious, and unfained; I ſee not why you may not in a due and moderate proportion, difference your prices according to the delayes of payment, without any oppreſſion to the buyer: Howbeit, if any man pleaſeth to be ſo free, as to take no

notice

notice of time, but to make future dayes in his account present, I shall commend his charity, though I dare not presse his example as necessary.

The case is equally just on the behalfe of the seller: who if he be either driven by some emergent necessity; or drawne by the opportunity of a more gainfull bargaine, to call for his money before his day, may justly be required by the late buyer, to abate of the returnable summe, in regard of the prevention of the time covenanted; by reason of the inconvenience or losse whereunto he is put upon the suddaine revocation of that money, which is not by agreement payable till the expiration of the time prefixed. But what quantity is to be allowed on the one part, or defalked on the other, is onely to be moderated by Christian Charity, and that universall rule of doing what we would be willing to suffer.

CASE V.

Whether, and how farre, Monopolies are, or may be lawfull.

THe most famous Monopolie that we finde in history is that of *Egypt*, Gen. 41. 56, 57. wherein the provident Patriarch *Joseph*, out of the fore-sight of a following dearth, bought up the seven yeares graine for *Pharaoh*, and layd it up in publique store-houses; and in the generall scarcity sold it out to the inhabitants, and strangers, with no small advantage; which was so farre from unlawfull, as that he thereby merited the name of the Saviour of *Egypt*:* and if any worthy Patriot out of a like providence, shall before-hand gather up the commodities of his country into a publique Magazine

* So the Vulgar renders *Zaphnath paaneah* Salvator mundi, Gen. 41 45.

for

for the common benefit and reliefe of the people, upon the pinch of an enſuing neceſſity, he is ſo farre out of the reach of cenſure, as that he well deſerves a ſtatue with the Inſcription of Publique Benefactor; So as it is not the meere act of Monopolizing that makes the thing unlawfull, but the ground and intention, and the manner of carriage.

All Monopolies, as they are uſually practiſed, are either ſuch as are allowed by Soveraigne authority, or privately contrived by ſecret plot and convention for a peculiar gaine to ſome ſpeciall perſons. If the firſt, it muſt be conſidered upon what reaſon that priviledge is granted, and upon what termes; If both theſe be juſt, the grant can be no other. For firſt, it may not be denyed, that ſupreme authority, whether of Princes or States, hath power to grant ſuch priviledges where they ſhall finde juſt

cause; and secondly, that there may be very just motives of granting them to some capable and worthy persons; I should be ashamed to imagine that either of these should need any probation.

Doubtlesse then, there is manifest equity, that where there hath beene some great merit, or charge, or danger in the compassing of some notable worke for a common good, the undertaker should be rewarded with a patent for a secured profit to himselfe. As put case some well minded Printer (as one of the *Stephens*) is willing to be at an excessive charge in the faire publication of a learned and usefull worke for the benefit of the present and following ages; it is most just that he should from the hands of Princes or States receive a Priviledge for the sole impression; that he may recover, with advantage, the deep expence he hath beene at;

Other-

Otherwiſe ſome Interloper may perhaps underhand fall upon the work at a lower rate, and undoe the firſt editor; whoſe induſtry, care and coſt ſhall thus be recompenced with the ruine of himſelfe and his poſterity; as were too eaſie to inſtance.

If a man have by notable dexterity of wit, and art; and much labour and charge after many experiments, attained to the skill of making ſome rare engine of excellent uſe for the ſervice of his Prince and Countrey; as ſome ſingular water worke; or ſome beneficiall inſtrument for the freeing of navigable rivers from their ſandy obſtructions, it is all the reaſon in the world, that by the juſt bounty of Princes he ſhould be ſo far remunerated, as that he alone may receive a patent of enjoying a due profit of his owne invention.

But how farre it may be lawfull for a Prince, not onely to gratifie a

well deserving Subject, with the fee of his owne deviſe, but with a profit ariſing from the ſole ſale of marketable commodities through his Kingdome; or whether, and how farre in the want of monies, for the neceſſary ſervice of his State, he may for the publique uſe, raiſe, ſet, or ſell monopolies of that kind, is diverſly agitated by Caſuiſts; and muſt receive anſwer according to the abſolutneſſe or limitation of thoſe Governments, under which they are practiſed: But with this, that where this is done, there may be great care had of a juſt price to be ſet upon the commodities ſo reſtrained, that they be not left to the lawleſſe will of a priviledged ingroſſer, nor heightned to an undue rate by reaſon of a particular indulgence.

This may be enough for authoritative Monopolies. The common ſort of offenſive practices this way are

are private and single, or conventionall, and plotted by combination. The former, as when some covetous extortioner, out of the strength of his purse, buyes up the whole lading of the ship, that he may have the sole power of the wares to sell them at pleasure, which, there is no feare but he will doe with rigour enough. The true judgment of which action, & the degrees of the malignity of it, must be fetcht, as from the minde, so from the management of the buyer; as being so much more sinfull, as it partakes more of oppression. The latter, when some brethren in evill conspire to prevent the harvest, to buy up, or hoord up the graine, with a purpose to starve the market, and to hatch up a dearth. A damnable practise in both kindes; and that which hath of old been branded with a curse: neither lesse full of injustice than uncharitablenesse; and that which cryes aloud

aloud, for a just punishment, and satisfactory restitution.

I cannot therefore but marvaile at the opinion of learned *Lessius* (which he fathers also upon *Molina*) that too favourably minces the hainousnesse of this sin, bearing us in hand, that it is indeed an offence against charity, and common profit, but not against particular Justice. His reason: To buy that corne (saith he) could not be against justice, for he bought it at the current price: Nor yet to sell it, could be against justice, because he was not tyed out of justice at that time to bring it forth to sale: When he might easily have considered, that it is not the mere act of buying, or of not selling, that in it selfe is accused for unjust, but to buy, or not to sell, with an intention, and issue of oppressing others, and undue enriching themselves by a dearth. For what can be more unjust then for a man to indevour

indevour to raise himself by the affamishing of others?

Neither can it serve his turne to say by way of excuse, that the multitude of buyers may be the cause of a dearth, and yet without sin; since they doe rather occasion, then cause a scarcity; and are so farre from intending a dearth in making their market, that they deprecate it, as their great affliction.

And if, by his owne confession, those, who either by force, or fraud hinder the importation of corne, that a dearth may continue, are guilty of injustice, and are bound to make restitution both to the Commonwealth in giving cause to raise the price; as also to the Merchant, whom they have hindered of his meet gaine; how can those be liable to a lesse sin, or punishment, that either buy up, or wilfully keep in their graine with a purpose to begin, and hold on a dearth?

dearth: and what lesse can it be then force or fraud, that by their crafty and cruell prevention the poor are necessitated to want that sustenance, whereby their life should be maintained?

Wise *Solomon* shall shut up this Scene for me. *He that withholds corn, the People shall curse him, but blessings shall be upon the head of him that selleth it.* Prov. 11. 26.

Case VI.

Whether, and how farre doth the fraudulent bargaine binde me to performance.

HOw farre in matter of law, you must advise with other Counsaile, but for matter of conscience, take this:

Is the fraud actively yours, done by you to another? or else passively put by

by another upon you? If the former, you are bound to repent and satisfie; either by rescinding the march, or by making amends for the injury: If the latter; wherein did the fraud lye? If in the maine substance of the thing sold, the bargaine is both by the very law of nature, and in conscience, void; yea indeed, not at all: as if a man have sold you copper lace for gold, or alchymie plate for silver; the reason is well given by * Casuists: There is no bargaine without a consent; and here is no consent at all, whiles both parties pitch not upon the same subject; the buyer propounds to himself gold and silver, the seller obtrudes copper, and Alchymie; the one therefore not buying what the other pretended to sell, here is no bargaine made, but a mere act of coxenage, justly liable to punishment by all lawes of God and

* Lessius l. 2. c. 17. dub. 5.

man.

man. But if the fraud were onely in some circumstances, as in some faulty condition of the thing sold not before discerned; or in the over-prizing of the commoditie bought; the old rule is; *Caveat emptor*; You must (for ought I know) hold you to your bargain; but if that faulty condition be of so high a nature that it marres the commoditie, and makes it useleſſe to the buyer, the ſeller being conſcious of the fault is injurious in the tranſaction, and is bound in conſcience to make ſatisfaction; and if he have willingly over-reacht you in the price, in a conſiderable proportion is guilty of oppreſſion.

It is very memorable in this kinde that *Cicero* relates to us of a fraudulent bargaine betwixt * *Canius*, a Roman Knight and Orator, and one *Pythius* a Banker of *Syracuſe*. *Canius* comming upon occaſion of pleading

* Cicer. de Offic. l. 3. Sect. 18.

to

to the city of *Syracuſe*, tooke a great liking to the place; and ſetling there, gave out that he had a great deſire to buy ſome one of thoſe pleaſant gardens, wherewith, it ſeemes, that city abounded; that he might there recreate himſelf when he pleaſed, with his friends.

Pythius, a crafty merchant, hearing of it, ſends word to *Canius*, that hee had a faire garden which he had no minde to ſell; but if he pleaſed to make uſe of it for his ſolace, he might command it as his owne; and withall courteouſly invites *Canius* to ſuppe with him there the day following: In the meane time being a man by reaſon of his trade of exchange, very gracious in the city, he calls the fiſhermen together, and deſires them that the next evening they would fiſh in the ſtreame before his garden, and bring him, what they ſhall have caught: *Canius* in due time comes accor-

according to the invitation, to supper; where there was delicate provision made for him by *Pythius*; and store of boates bringing in their plentifull draughts of fish, and casting them downe at the feet of *Pythius*: *Canius* askes the meaning of this concourse of Fishermen, and store of profered provision? *Pythius* tells him this is the commodity and priviledge of the place, if *Syracuse* yeeld any fish, here it is caught, and here tendered; *Canius* beleeving the report, importunes his host to sell him the ground: the owner after some seeming loathnesse, and squeamish reluctation, at last yeelds to gratifie him with the bargaine: The deare price is payd downe with much eagernesse. The new master of the place, in much pride of his purchase, the next day repaires early to his garden, invites his friends to a friday feast, and finding no boat there, asks the neighbour

bour whether it were holiday with the fiſhermen, that he ſaw none of them there; No, ſaid the good man, none that I know; but none of the trade uſe to fiſh here; and I much marvailed at the ſtrange confluence of their boats here yeſterday: The Roman Orator was downe in the mouth; finding himſelfe thus cheated by the money-changer: but, for ought I ſee, had his amends in his hands; He meant, and deſired to buy the place, though without any ſuch accommodation; but over-bought it upon the falſe pretence of an appendent commodity; the injury was the ſellers, the loſſe muſt be the buyers.

But if ſuch be the caſe, that you are meerely drawne in by the fraud, and would not have bought the commodity at all, if you had not beene induced by the deceit, and falſe oathes and warrants of the ſeller, you

have

have juſt reaſon, either, if you may, to fall off from the bargaine; or, if the matter be valuable, to require a juſt ſatisfaction from the ſeller; who is bound in conſcience, either by annulling the bargaine, or abatement of price to make good your indemnity.

In theſe matters of contract there is great reaſon to diſtinguiſh betwixt a willing deceit, and an involuntary wrong; If a man ſhall fraudulently ſell an horſe which he knowes ſecretly and incurably diſeaſed, to another for ſound; and that other, beleeving the ſellers deep proteſtation, ſhall upon the ſame price, *bonâ fide*, put him off to me; I feel my ſelfe injured, but whither ſhall I go for an amends? I cannot challenge the immediate ſeller, for he deceived me not; I cannot challenge the deceiver, for he dealt not with me; In humane lawes, I am left remedileſſe; but in the law of con-

conſcience, the firſt ſeller, who ought to have born his own burthen of an inevitable loſſe, is bound to transferre by the hands that ſold me that injurious bargaine, a due ſatisfaction.

Neither is it other of fraudulent conveyances in the houſes or land, how ever the matter may be intricated by paſſing through many perhaps unknowing hands, yet the ſinne and obligation to ſatisfaction, will neceſſarily lie at the firſt door; whence if juſt reſtitution doe not follow, the ſeller may purchaſe Hell to boot.

Think not now on this diſcourſe, that the onely fraud is in ſelling; there may be no leſſe (though not ſo frequent) fraud in buying alſo; whether in unjuſt payment, by falſe coyne; or by injuſtice of quantities, as in buying by weights, or meaſures above allowance; or by wrong valuation of the ſubſtance & quality of the com-

commodity, misknown by the seller; As for instance, a simple man, as I have knowne it done in the Western parts, findes a parcell of Ambergris cast upon the sands; he perceiving it to be some unctious matter, puts it to the base use of his shooes, or his cart wheel; a merchant that smels the worth of the stuffe buyes it of him for a small summe; giving him a shilling or two, for that which himselfe knowes to be worth twenty pounds: the bargaine is fraudulent; and requires a proportionable compensation to the ignorant seller into whose hands providence hath cast so rich a booty.

Shortly, in all these intercourses of trade, that old and just rule which had wont to sway the traffique of heathens, must much more take place amongst Christians, (*cum bono bene agier*) that honest men must be honestly dealt with: and therefore

fore that all fraud must be banished out of their markets; or, if it dares to intrude, soundly punished; and mulcted with a due satisfaction.

Case VII.

How far, and when am I bound to make restitution of another mans goods remaining in my hand?

REstitution is a duty no lesse necessary, than rarely practised amongst Christians. The Arch-publican *Zacheus* knew that with this he must begin his conversion; and that knowne rule of Saint *Austen** is in every mans mouth, No remission without restitution. For this act is no small piece of commutative Justice, which requires that every man should have his owne: Most just therefore it is, that what you have taken, or

* Aug. epist. 54. ad Macedon.

be-

detained from the true owner should be restored; neither can it be sufficient, that you have conceived a drye and bootlesse sorrow for your wrongfull detention, unlesse you also make amends to him by a reall compensation.

But you are disabled to make restitution by reason of want, your will is good, but the necessity, into which you are fallen, makes you uncapable of performance: See first, that it be a true, and not fained necessity; Many a one, like to leud criples that pretend false soares, counterfeit a need that is not, and shelter themselves in a willing Jaile, there living merrily upon there defrauded creditor, whom they might honestly satisfie by a well improved libertie: This case is damnably unjust, but if it be a true necessity of Gods making, it must excuse you for the time, till the same hand that did

cast

caſt you downe, ſhall be pleaſed to raiſe you up againe; then, you are bound to ſatisfie; and in the meane time, lay the caſe truly before your creditor, who if he be not mercileſſe, where he ſees a reall deſire, and indeavour of ſatisfaction, will imitate his God in accepting the will for the deed: and wait patiently for the recovery of your eſtate.

You ask now, to whom you ſhould tender reſtitution?

To whom, but the owner? But he, you ſay, is dead; That will not excuſe you; he lives ſtill in his heires; It is memorable (though in a ſmall matter) which *Seneca* reports of a Pythagorean Philoſopher at *Athens*, who having run upon the ſcore for his ſhooes at a ſhop there, hearing that the ſhoomaker was dead, at firſt was glad to think the debt was now paid; but ſtraight recollecting himſelfe, he ſayes within himſelfe; Yet, howſo-

ever, the shoomaker lives still to thee, though dead to others; and thereupon puts his money into the shop, as supposing that both of them would finde an owner. It is a rare case that a man dyes, and leaves no body in whom his right survives: But if there be neither heire, nor executor, nor administrator, nor assigne; the poore (saith our Saviour) ye shall have alwayes with you; Make thou them his heire: Turne your debt into almes.

Obj. But alas you say; I am poore my selfe, what need I then look forth for any other? Why may not I employ my restitution to the relieſe of my owne necessity?

Sol. It is dangerous, and cannot be just for a man to be his owne carver altogether in a business of this nature; You must look upon this money, as no more yours than a strangers; and howsoever it be most true that every man

man is neareſt to himſelfe, and hath reaſon to wiſh to bee a ſharer, where the need is equall; yet it is fit this ſhould be done with the knowledge and approbation of others: Your Paſtor, and thoſe other that are by authority intereſſed in theſe publique cares, are fit to be acquainted with the caſe; (if it be in a matter meet to be notified) as a buſineſſe of debt or pecuniary ingagement, let their wiſdome proportion the diſtribution; But if it be in the caſe of ſome ſecret crime, as of theft, or cozenage, which you would keep as cloſe as your owne heart, the reſtitution muſt be charged upon your conſcience to be made with ſo much more impartiality, as you deſire it more to be concealed; Herein have a care of your ſoule, what ever becomes of your eſtate.

As for the time of reſtitution it is eaſily determined, that it cannot

well be too soone for the discharge of your conscience, it may be too late for the occasions of him to whom it is due; Although it may fall out, that it may prove more fit to deferre for the good of both: wherein charity and justice must be called in as arbitrators; The owner calls for his money in a riotous humour to misspend it upon his unlawfull pleasure; if your delay may prevent the mischiefe, the forbearance is an act of mercy: The owner calls for a sword deposited with you, which you have cause to suspect he meanes to make use of, for some ill purpose; your forbearing to restore it is so both charitable and just, that your act of delivery of it may make you accessary to a murther. Whereto I may adde, that in the choice of the time, you may lawfully have some respect to your selfe; for if the present restitution should be to your utter undoing,

which

which may be avoided by ſome reaſonable delay, you have no reaſon to ſhun anothers inconvenience by your own inevitable ruine; in ſuch caſe let the creditor be acquainted with the neceſſity, his offence deprecated; and rather put your ſelfe upon the mercy of a Chancery, then be guilty of your owne overthrow.

But when the power is in your hand, and the coaſt every way cleare, let not another mans goods or mony ſtick to their fingers; and thinke not that your head can long lye eaſily upon another mans pillow.

Yea, but you ſay the money or goods miſ-carried, either by robbery or falſe truſt, ere you could employ them to any profit at all; This will not excuſe you; after they came into your power, you are reſponſible for them; What compaſſion this may work in the good nature of the owner for the favour of an abate-

ment, must be left to his own breſt; your tye to reſtitution is not the leſſe; For it is ſuppoſed, had they remained in the owners hands they had been ſafe; if it were not your fault, yet it was your croſſe, that they miſcarried; and who ſhould bear your croſſe but your ſelf?

Shortly then, after all pretences of excuſe; the charge of wiſe *Solomon* muſt be obeyed: *With-hold not good from the owners thereof, when it is in the power of thine hand to doe it*, Prov. 3,17.

Case VIII.

Whether, and how farre doth a promiſe extorted by fear, though ſeconded by an oath, bind my conſcience to performance?

A Mere promiſe is an honeſt mans ſtrong obligation; but if it be withall

withall backed with an oath, the bond is ſacred, and inviolable.

But let me ask you what promiſe it is that you thus made, and bound; If it be of a thing unlawfull to be done, your promiſe and oath is ſo farre from binding you to performance, that it bindes you onely to repentance that ever you made it; In this caſe your performance would double and heighten your ſinne: It was ill to promiſe, but it would be worſe to performe: *Herod* is by oath ingaged for an indefinite favour to *Salome*; She pitches upon *John Baptiſt*'s head; He was ſory for ſuch a choice, yet for his oaths ſake hee thinkes hee muſt make it good: Surely, *Herod* was ill-principled, that he could thinke a raſh oath muſt binde him to murder an innocent; He might have truly ſaid, this was more than he could doe; for that we can do, which we can lawfully doe.

But if it be a lawfull thing that you have thus promised, and sworne; though the promise were unlawfully drawne from you by feare, I dare not perswade you to violate it. It is true that divers learned Casuists hold, that a promise drawne from a man by feare is void, or at least revokable at pleasure; and so also the oath annexed, which followes the nature of the act whereto it appends; chiefly upon this ground; that both these are done without consent, meere involuntary acts, since nothing can be so contrary to consent as force and feare: But I dare not goe along with them; for that I apprehend there is not an absolute involuntarinesse in this engagement, but a mixt one, such as the * Philosopher determines in the Mariner, that casts his goods over board to save his life; in it selfe, he hath no will to doe it; but here

* Arist. Eth. l. 2. c. 2.

and

and now upon this danger imminent, he hath an halfe-will to perform it.

Secondly, I build upon their owne ground; There is the ſame reaſon, they ſay, of force, and of fraud; now that a promiſe and oath drawne from us by fraud bindes ſtrongly, we need no other inſtance then that of *Joſhua* made to the *Gibeonites*; there could not be a greater fraud than lay hid in the old ſhooes, thred-bare garments, rent bottels, and mouldy proviſions of thoſe borderers, who under the pretence of a remote nation put themſelves under the intereſt and protection of *Iſrael*: *Joſh.* 9. 12, 13. &c. the guile ſoone proved apparent, yet durſt not *Joſhua*, though he found himſelfe cheated into this covenant, fall off from the league made with them; which when, after many ages, *Saul* out of politique ends went about to have broken, we ſee how fearfully it was avenged with a grievous

plague of famine upon *Israel*, even in *Davids* dayes, 2 *Sam.* 21.1. who was no way accessary to the oppression; neither could be otherwise expiated than by the bleeding of *Saul's* bloody house. When once we have interessed God in the businesse, it is dangerous not to be punctuall in the performance. If therefore a bold thiefe, taking you at an advantage, have set his dagger to your brest, and with big oathes threatned to stab you, unlesse you promise and sweare to give him an hundred pounds to be left on such a day in such a place for him, I see not how (if you be able) you can dispence with the performance; the onely help is, (which is well suggested by * *Lessius*) that nothing hinders why you may not, when you have done, call for it back againe, as unjustly extorted. And truly, we are beholding to the Jesuite for so much

* Lessius de Jure, &c. l.2.C.42. dub.6.

of

of a reall equivocation; why ſhould you not thus right your ſelfe, ſince you have onely tyed your ſelfe to a mere payment of the ſumme: upon ſtaking it downe for him, you are free. But if he have forc'd you to promiſe, and ſwear not to make him knowne, you are bound to be ſilent in this act, concerning your ſelfe; but withall, if you find that your ſilence may be prejudiciall to the publique good, for that you perceive the licentiouſneſſe of the offender proceeds (and is like ſo to doe) to the like miſchiefe unto others, you ought, though not to accuſe him for the fact done unto you; yet to give warning to ſome in authority to have a vigilant eye upon ſo leud a perſon, for the prevention of any further villany.

But if it be in a buſineſſe, whoſe perill reſts onely in your ſelfe, the matter being lawfull to be done;

your

your promiſe and oath (though forced from you) muſt hold you cloſe to performance, notwithſtanding the inconveniencies that attend. If therefore you are diſmiſſed upon your Parole, for a certaine time, to returne home, and diſpoſe of your affaires, and then to yield your ſelfe againe priſoner to an enemy; the obligation is ſo ſtrict and firme, that no private reſpects may take it off: and it ſhould be a juſt ſhame to you, that a * Pagan ſhould out of common honeſty hold himſelf bound to his word, (not without the danger of torment and death) when you that are a Chriſtian ſlip away from your oath.

* Attilius Regulus.

CASE

Case IV.

Whether thoſe moneys or goods which I have found, may be ſafely taken and kept by me to my owne uſe.

IT is well diſtinguiſhed by *Sotus* out of *Aquinas* *, that thoſe things which may be found, are either ſuch as call no man maſter, as ſome pearl, or precious ſtone, or Ambergris lying upon the ſhore; or ſuch as have an owner, but unknowne to us, or (as we may adde, to make up the number compleat) ſuch as whoſe owner we know. Where the true owner is knowne, ſpeedy reſtitution muſt follow; otherwiſe the detention is in the next doore to theft; Where the commodity found hath no owner, it juſtly falls to the right of the firſt finder; for both the place and the thing are maſterleſſe, (*adeſpota*) and common;

* Dom. Sot. de Jure & Juſtit. l. 5. q. 3. p. 3g. 436.

offering

offering themselves to the next commer: The onely difficulty is in those things which have an unknown owner: And certainly common justice and honesty suggests to us, that we may not seize on commodities of this kinde, as absolutely our own; the casualty of their mis-laying doth not alter their propriety; they are still his that lost them; though out of his sight, yet not out of his right; and even naturall Justice, would give every man his owne. The Lawes both Civill and Canon, and Municipall doe sufficiently guide our practise in many particular cases of this nature, and our Conscience must lead us to follow them: If they be quick commodities, as horses, sheep, kine, and the like, (which we call Waises and Strayes) every one knowes they are to be publiquely impounded, that upon search the owner may be the surer to find them; and if he

he come not in, the ſooner, to be openly cryed in ſeverall markets, that the noiſe of his own neglected goods may come to his eare: and if, upon a continuing ſilence, they be put into the Cuſtody of the Lord of the Manour, (who is moſt likely to be reſponſible) and he ſhall make uſe of them, before his year and day be expired, he ſhall not doe it without ſome mark of diſtinction, that yet the true owner may know, they are not challenged by the preſent poſſeſſour, as his owne, but lye open to the juſt claime of their true maſter.

But if they be dead commodities, as a jewell, a purſe, or ſome ring of price, or the like, the finder may not preſently ſmother up the propriety of it in his owne cofer; his heart tells him that the meer accident of his finding it, cannot alienate the juſt right of it from the true owner; he is therefore bound in conſcience, in an honeſt

honeſt ſincerity to uſe all good means for the finding out of the right proprietary, whether by ſecret inquiry, or open publication: and if after due inquiſition, no claime ſhall be made to it for the preſent, he ſhall reſerve it in his hand in expectation of a juſt challenge: upon the aſſurance whereof (how late ſoever) he is bound to reſtore it to the proper owner: who, on the other ſide, ſhall faile in his duty of gratitude, if he returne not ſome meet acknowlegement of that good office, and fidelity: In all which mutuall carriages, we ought to be guided by thoſe reſpects, which we could wiſh tendered to our ſelves in the like occaſions. Mean while, in all the time of our cuſtody, we are to looke upon thoſe commodities as ſtrangers; making account of ſuch a potentiall right onely in them, as we are ready and deſirous to reſigne to the hands that purchaſed and loſt them. On the

the contrary, no words can expreſſe the horrible cruelty and injuſtice that is wont to be done in this kinde, not onely on our ſhores, but in other nations alſo, upon the ſhip-wrecked goods both of ſtrangers, and our own compatriots; whiles in ſtead of compaſſioning and relieving the loſſe, and miſeryes of our diſtreſſed bretheren, every man is ready to run upon the ſpoile, and, as if it were from ſome plundered enemy, is eagerly buſie in carrying away what riches ſoever come to hand, which they falſly, and injuriouſly terme *Gods Grace*, when as indeed it is no other than the Devils booty. This practiſe can paſſe for no other than a meere robbery, ſo much more haynous, as the condition of the miſ-carried owner is more miſerable: what a foule inhumanity is this, to perſecute him whom God hath ſmitten; and upon no other quarrell to be cruell to our brother, than becauſe

becauſe the Sea hath been mercileſſe? Deare Countrymen, ye eſpecially of the Weſt, leave theſe abominable pillages to ſavage Nations, that know not God; and, putting on the bowels of tender compaſſion, lend your beſt ſuccour rather for the reſcue of poore wrecked ſoules, and ſafely preſerving that ſmall reſidue of their drowned fraight, which you cannot imagine that the Sea hath therefore forborn to ſwallow, that you might.

Case X.

Whether I may lawfully buy thoſe goods which I ſhall ſtrongly ſuſpect, or know to be ſtolen or plundered; or, if I have ignorantly bought ſuch goods, whether I may lawfully (after knowledge of their owner) keep them as mine.

TO buy thoſe goods which you know, or have juſt cauſe to ſuſpect

ſpect to be ſtoln or plundered, is no better then to make your ſelfe acceſſary to the theft; if you doe it with an intention to poſſeſſe them as your owne; for what doe you elſe herein, but *ex-poſt-facto* partake with that thiefe, who ſtole them; and incourage him in his leud practices: ſince according to the old word; If there were no receivers, there would be no thieves. Neither will it ſerve the turn, that in the caſe of plunder, there may ſeeme a pretence of juſtice, in that this is pleaded perhaps to be done by ſome colour of authority; for certainly where there is not law, there can be no juſtice, whereof law is the onely rule: Whatever then is againſt an eſtabliſhed law, in matter of right and poſſeſſion, can be no other than unjuſt; Take heed therefore leſt that heavy challenge of the Almighty be (upon this bargaine) charged upon you; Pſal. 50. 18. *When thou ſaweſt*

a

a thiefe, thou consentedst with him: These stoln waters may be sweet in the mouth, but they will be poyson in the maw, and like the water of a just jealousie, rottennesse to the belly: But if (as these ill-gotten goods are lightly cheap penny-worths) you buy them onely with an intention to gratifie the true owner, with an easie purchase of his owne, (which would perhaps else be unrecoverable) (whiles your profession, it do it for no other end, takes off the scandall) I cannot but allow your act, and commend your charity.

But if, making use of that rule which Saint *Paul* gives for meat, in bargaining for any other commodityes, you shall extend your liberty to whatsoever is sold in the market, and shall in the exercise of that freedome upon a just and valuable consideration ignorantly buy those goods which you afterward heare, and know, to

be

be anothers, the contract is on your part valid, and faultleſſe, ſince your invincible want of knowledge acquits you from any guilt of conſent; but withall, there is an after-game to be plaid by you: you are bound (upon juſt notice) to acquaint the true owner with the matter, and to profer your ſelfe ready to joyne with him in the proſecution of law, or juſtice upon the offender, and upon a meet ſatisfaction to tender him his own.

But if the theft be onely upon probability; and it be doubtfull whether the goods belong to the owner notifyed to you, your duty is to make diligent inquiry into the buſineſſe; and if upon due inquiſition, you finde too much likelihood of the theft, I dare not adviſe you (with ſome Caſuiſts) to reverſe the bargaine, and to returne the commodity to thoſe falſe hands that purloyned it; but rather to call the probable owner, and with him

him to appeale unto juſt authority; for a more full examination of the right, and an award anſwerable to juſtice: but if there appeare no good grounds for an impeachment, you may peaceably ſit down in the poſſeſſion, till further evidence may convince your judgement in the contrary.

RESO-

RESOLUTIONS.

The second Decade.

Cases of Life and Liberty.

Case I.

Whether, and in what cases it may be lawfull for a man to take away the life of another.

HOw light a matter soever it may seeme to the world now long soaked in blood, a mans life is most precious; and may not (but upon the waightiest of all causes) be either taken, or given away. the great God hath

hath reserved to himself this prerogative, to be the onely absolute Lord of it; neither can any creature have power to command it, but those onely to whom he hath committed it by speciall deputation; nor they neither, by any independent or illimited authority; but according as it is regulated by just lawes: to call for a mans life meerly out of will, is no other than a Turkish tyranny.

Now the same God that hath ordained Soveraign powers to judge of, and protect the life of others, hath given weighty charge to every man to tender and manage his owne: which bindes him to use all just meanes for his owne preservation; although it should be the necessitated destruction of another.

Let us see therefore how far, and in what cases, man, that is alwayes appointed to be master of his owne life, may be also master of another mans.

That

That publique juſtice may take away the life of hainous malefactors, is ſufficiently knowne, to be not lawfull onely, but required; and indeed ſo neceſſary, that without it there were no living at all amongſt men.

That in a juſt warre the life of an open enemy may be taken away, is no leſſe evident; the onely queſtion is of private men in their owne caſes.

And here we need not doubt to ſay that even a private man, being mortally aſſaulted, may in his owne defence lawfully kill another, I ſuppoſe the aſſault mortall, when both the weapon is deadly, and the fury of the aſſailant threatens death; as for ſome ſleight and ſuddaine paſſages of a ſwitch, or a cane, they come not under this conſideration, although thoſe ſmall affronts offered to eminent perſons prove oftentimes to be quarrells no leſſe than mortall. But

even in these assaults, (except the violence be so too impetuous, that it will admit of neither parle nor pause) there ought to be (so much as may consist with our necessary safety) a tender regard and indeavour to avoid the spilling of bloud; but if neither perswasion, nor the shifting (what we may) our station, can abate any thing of the rage of the assailer, death must: Yea, if not my brother onely, but my father, or my sonne should in this forcible manner set upon mee, howsoever I should hazard the award of some blowes, and with teares beg a forbearance, yet, if there would bee no remedy, nature must pardon mee; no man can bee so neare mee as my selfe.

I cannot therefore subscribe to the counsell of * *Leonardus Lessius* (abetting some ancient Casuists, and pre-

* Les. de jur. &c. l. 2. c. 9. dubit. 8. Ex Antonio & Sylvestr. &c.

tended

tended to be countenanced by ſome Fathers) that it were meet for Clericall and Religious perſons rather to ſuffer death, than to kill a murtherer: ſince no reaſon can be ſhewed, why their life ſhould not bee as deare to them as others; or why they ſhould be exempted from the common law of nature; or why their facred hands ſhould be more ſtained with the foule blood of a wicked man-ſlayer, juſtly ſhed, than any others. I am ſure *Phineas* thought not ſo; nor *Samuel* after him; and (which is moſt of all) that the honor and priviledges of the Sonnes of *Levi* were both procured, and feoffed on them upon an injoyned blood-ſhed.

* Onely here is the favour and mercy of that learned Caſuiſt, that Clerks and Votaries are not alwayes bound rather to dye, than kill: for, ſaith he, if ſuch religious perſons ſhould bethink

* Ibid. parag. ult.

himselfe, that he is in a deadly sinne, and should thereupon feare that he should be damned, if he were killed in that wofull and desperate estate; hee were then bound by all meanes to defend himselfe, and to preferre the safety of his owne soule, before the life of another: As if nothing but the feare of damnation could warrant a man for his owne safeguard, as if nothing but the danger of hell could authorize an holy person to be his owne guardian; as if the best of lives were so cheap and worthlesse, that they might be given away for nothing, whereas contrarily *Precious in the sight of the Lord is the death of all his Saints*, Psalm. 116. But in such a case (according to the opinion of this great * Casuist) charity to our selves doth not more arme and enforce our hand, than charity to our neighbour holds it, and bindes it up: We may

* Less. ibid.

not

not kill, leſt the man-ſlayer, dying in the attempt of this murther, ſhould everlaſtingly periſh: Surely, I cannot but admire this unreaſonable mercy in a father of the Society; Where was this conſideration when ſo many thouſands of innocent perſons were doomed to be blown up in a ſtate of impenitence; whoſe unrepented hereſie muſt needs have ſent them up inſtantly to their hell?

By this reaſon, a malefactor, if he be obdured in his ſinne, and profeſſeth to bee remorſleſſe, may not feele the ſtroke of Juſtice. Shortly then, if a man will needes be wicked to my deſtruction, the evill is his owne; let him beare his owne guilt, let me looke to my owne indempnity.

The caſe is yet more difficult where the attempt is not upon my perſon, but my goods; if a man will be offering to robbe my houſe, or to take my purſe, what may I doe in this

case? Surely, neither charity, nor iustice can dissuade me from resisting; the lawes of God and man will allow me to defend my owne; and if in this resistance the Thief, or Burglayer miscarry, his blood will be upon his owne head: although in the meane time, charity forbids that this slaughter should be first in my intention; which is primarily bent upon my owne safety, and the vindication of my owne just propriety: the blood that followes is but the unwilling attendant of my defence: of the shedding whereof, God is so tender, that he ordained it onely to be inoffensively done in a nightly robbery; *Exodus* 22.2. where the purpose of the thiefe is likely to bee more murtherous, and the act more uncapable of restitution.

What then if the thiefe, after his robbery done, ceasing any further danger of violence, shall betake himselfe

selfe to his heeles, and run away with my money? In such a case, if the summe be so considerable, as that it much imports my estate, how ever our municipall lawes may censure it (with which, of old, even as killing (*se defendendo*) was no lesse than felony of death) my Conscience should not strike me if I pursue him with all might, and in hot chase so strike him, as that by this meanes I disable him from a further escape, for the recovery of my owne; and if hereupon his death shall follow, however I should passe with men, God and my owne heart would acquit mee.

Neither doubt I to say the like may be done upon a forcible attempt of the violation of the Chastity of either sexe: A case long agoe adjudged by the doome of nature it selfe in *Marius* the Generall of the Roman

* Dalton. p. 144.

army (as * *Cicero* tells us) clearely acquitting a young man for killing a Colonel that would have forced him in this kind.

But I may not assent to + *Dominicus Bannez*, *Petrus Navarrus*, and *Cajetan*, (though grave Authors) who hold, that if a man goe about upon false and deadly criminations to subborne witnesses against mee, to accuse me to a corrupted Judge, with a purpose to take away my life, in a colour of justice, if I have no other way to avoid the malice, I may lawfully kill him: It were a wofull and dangerous case, if every man might be allowed to carve himselfe of justice; Meere accusations are no convictions; How know I what God may work for me on the Bench, or at the Barre? what evidence hee may raise to cleare mee? what confusion, or contraction hee

* Orat. pro Mil. + Bann q. 64.a.7.dub.9. Nav. l.2. c.3. Less. l.2, de Jure, &c c.9.dub.8.

may

may cauſe in the mouthes of the hired witneſſes? what change he may work in the Judge; what interpoſition of higher powers; There is a providence in this caſe to be relyed upon; which can and will bring about his owne holy purpoſes, without our preſumptuous, and unwarrantable undertakings.

Case II.

Whether may I lawfully make uſe of a Duell for the deciding of my right, or the vindication of my honour?

I Have long agoe ſpent my opinion upon this point, in a large epiſtolar diſcourſe, which I finde no reaſon to alter: thither I might referre you to ſpare my labour; but leſt perhaps that ſhould not be at hand, ſhortly thus:

The ſword in a private hand was

never ordained to be a decider of any controversies, save this one, whether of the two is the better Fencer; nor yet that alwayes, since Eccles. 9. 11. *The race is not to the swift, nor the battaile to the strong*; as *Solomon* hath observed: It can be no better therefore, than a meere tempting of God, as* *Rodriguez* justly censures it, to put our selves, or our cause upon so unwarranted a tryall: I finde but two practises of it in the Records of Scripture, the one, that famous challenge of *Goliah*, which that proud *Philistim* had not made, if he had not presumed of his Giantly strength, and stature, so utterly unmatchable by all *Israel*, 1 *Sam.* 17. 24. that the whole host was ready to give back upon his appearance; he knew the advantage so palpable, that none would dare to undertake the quarrell; and had still gone on to triumph over that trem-

* Rodrig. Sum. cas. Tom. 1. cap. 73.

bling

bling army, had not Gods inexpected champion, by divine inſtinct taken up the monſter, and vanquiſhe him, leaving all but his head, to bedung that earth, which had lately ſhaken at his terrour.

The other was in that mortall quarrell betwixt *Joab* and *Abner*, on the behalfe of their two Maſters, *David* and *Iſhboſheth*; 2 Sam. 2. 14. wherein *Abner* invites his rivall in honor, to a Tragicall play, (as he termes it) a monomachie of twelve ſingle combatants on either part; which was ſo acted, that no man went victor away from that bloudy Theater. Only it is obſervable, that in both theſe conflicts ſtill the challengers had the worſt.

In imitation of which latter, I cannot allow that which I find frequently done in the managing of publique hoſtility; that ſome confident Cavaler out of meere bravery of ſpirit craves

craves leave to put himselfe forth before both Armies, and (as in way of preface to an ensuing battaile) bids defiance to any Antagonist; An act of more valor than judgement; whereof the undertaking is void of warrant; and the issue (lightly) of successe: whiles it pleaseth God commonly to punish presumption with a foyle; and the ominous miscarriage of one, proves a sad discouragement to many.

And if single fortitude be not triable this way, much lesse Justice in causes litigious; to make the sword arbiter of such differences, were no better than to revive the old Ordalian triall used by our Heathen Ancestors: Sith God hath no more ordained, nor promised to blesse the one than the other; And reason it selfe tells us, in how ill a condition that righteous cause is, which must be carried by the sharper weapon,

pon, the ſtronger arme, the skilfuller fencer.

Now whereas there are two acts, as introductions into the field, a Challenge, and an Acceptation; both of them have their guilt, but the former ſo much more, as it hath in it more provocation to evill.

I cannot therefore but wonder at, and cry downe the opinion of *Bannez*, and *Cajetan*, that a man ſlandered by an unjuſt accuſer, may juſtly challenge him the field, and vindicate himſelfe by the ſword; A Doctrine, which if it were allowed and accordingly practiſed, beſides that it would deſtroy the courſe of juſtice, and wreſt revenge out of the hands of the Almighty, were enough to make the world an *Aceldama*; For who would not be his owne Judge for the Accuſation; and his owne Executioner for the revenge?

There may yet ſeeme more innocence

cence in the Acceptation; which makes shew of a meere passive nature, and appeares to be extorted by the insolence of a provoking adversary, whose pressures are wont to receive such construction, as that the challenged party refusing, upon what ground soever, is in the vulgar opinion proclaimed for base and recreant; and I must needs confesse, the irritation diminisheth the offence; but withall, however the Spanish and Italian Casuists (whose Nations are wont to stand a little too highly upon the points of a misc called honour) are wont to passe faire interpretations of the matter, I cannot but find it deeply guilty also: for what is this other, than a consent to sin by engaging in blood; which by a man wise and conscionable might be turned off with a just contempt, without imputation of cowardise: since the plea of conscience is able to beare downe

the

the vaine fancies of idle word-men: or, if that will not be taken, the falſe blurres that are caſt upon a worthy mans reputation by vulgar breath, deſerve no entertainment but ſcorne; or laſtly, other means lie open to both parts for the proofe of a queſtioned valour, which in a lawfull way the challenged is ready to embrace; he walks not unprovided about the buſineſſe of his calling, if he be fairely ſet upon, on equall termes, he ſhall make no doubt to defend himſelfe: But to make a formall buſineſſe of a quarrell, on either part, and to agree upon a bargaine of blood-ſhedding, is wicked and damnable; and though both ſhould come fairely off, yet the very intention to kill, is murther.

This caſe is ſo cleare, that the Counſell of * *Trent* hath thought fit to denounce heavy ſentences, and in-

* Conc. Tr. Seſſ. 25. Rodriguez. Tom. 1. c. 73. de duello.

flict

flict sharp censures upon Emperours, Kings, States, and Potentates, that shall give allowance to Duels within their Dominions; pronouncing them *ipso jure* excommunicate; and depriving them of those towns, cities, lands, (if held of the Church) where such unlawfull acts are made: And that those who either act, or patronize, and by their presence assist, countenance, or abett such combats, shall incurre the sentence of excommunication, the losse of all their goods, and perpetuall infamy; and if they dye in such quarrell, shall, as selfe-murtherers, be debarred the priviledge of Christian buriall.

Briefly therefore, neither your justice, nor your honour may depend upon the point of private swords, and if there can be no other remedy, you must rather suffer in either, than hazard your soule.

CASE

Case III.

Whether may it be lawfull, in case of extremity, to procure the abortion of the child, for the preservation of the mother?

I Feare want of true judgement renders too many of the weaker sexe grossely culpable in matter of willing abortion; whiles being not well principled either in nature, or grace, they think it not unlawfull, or at least, venially so, whether out of the feare of painefull childe-birth, or for the avoidance of too great a charge, to prevent the fulnesse of their conceptions; and therefore, either by over vehement motion, or unwholsome medicine, are not unwilling to fore-stall nature, and to free themselves early of that which might in time prove their burden: Wherein they little know how highly they

they offend the Majesty of God in destroying his potentiall creature, and how heavy weight of guilt they lay upon their soules, whiles they indeavour to give an undue ease to their bodies.

Your question supposes an extremity; and surely such it had need to be, that may warrant the intention of such an event.

For the deciding whereof, our Casuists are wont to distinguish double; both of the state of the conception, and of the nature of the receipt: In the former, they consider of the Conception, either as it is before it receive life, or after that it is animated: Before it receive life, they are wont to determine, that howsoever it were no lesse than mortall sin, in a Physitian to prescribe a medicinall receit to cause abortion, for the hiding of a sinne, or any outward secular occasion; yet for the preservation

tion of the life of the mother, in an extreme danger, (I say, before animation) it might be lawfull: But after life once received, it were an hainous sin to administer any such mortall remedy. The latter Casuists are better advised; and justly hold that to give any such expelling or destructive medicine, with a direct intention to work an abortment, (whether before or after animation) is utterly unlawfull, and highly sinfull: And with them I cannot but concur in opinion; For, after conception we know that naturally followes animation, there is only the time that makes the difference; which in this case is not so considerable, as to take off a sinne: That of * *Tertullian* comes home to the point which both *Covarruvias* and † *Lessius* urge to this purpose: *Homicidii festinatio est prohibere nasci*; It is but an hastening of mur-

* Tertul. in Apol. c. 9. † Less. l. 2. c. 9. du. 10.

der

der to hinder that which would bee born; *Homo est qui futurus est*; It is a man that would be so, &c.

Upon this ground we know that in a further degree of remoteneſſe, a voluntary ſelfe pollution hath ever beene held to have ſo much guilt in it, as that *Angelus Politianus* reports it as the high praiſe of * *Michael Verrinus*, that he would rather dye, than yeild to it: how much more when there is a further progreſſe made towards the perfection of humane life?

And if you tell me that the life of the mother might thus be preſerved, whereas otherwiſe both ſhe and all the poſſibilities of further conceptions are utterly loſt; I muſt anſwer you with that ſure and univerſall rule of the Apoſtle, That *wee may not doe evill that good may come thereon*, Rom. 3.8.

* *Ne ſe pollueret, mavit ipſe mori*, Ex Politiano Gerard. Voſſ. de orig. & progreſ. Idol. l. 3. c. 18.

The

The second consideration is of the nature of the receit, and the intention of the prescriber; There are prescripts that may, in, and of themselves tend towards cure, and may have ordinarily such an effect; but yet being used and applyed for the mothers remedy, may prove the losse of the conception, being yet inanimate; these if they be given with no other intention than the preservation of the mothers life, may bee capable of excuse; for that the inconvenience (or mischief rather) which followed upon the receits was accidentall, and utterly against the minde, and hopes of him that advised them.

But if the conception bee once formed, and animated, the question will be so much more difficult, as the proceedings of nature are more forward: Whereupon it is, that the Septuagint in their Translation (as *Lessius* well observes) have rendered that

that Mosaicall law (in *Exod.* 21.) concerning abortions, in these termes. *If a man strike a woman that is with child, and shee make an abortion, if the child were formed, he shall give his life for the life of the child: if it were not formed, he shall be punished with a pecuniary mulct to her husband**: applying that to the issue, which the Vulgar Latin understands of the mother; and making the supposition to be of a formation and life; which the Latine more agreeably to the Originall, makes to be *Death*; and our English, with † *Castalion* expresses by *Mischief*: but whether the Mischief be meant of the death of the mother, or of the late-living issue, the Scripture hath not declared: ‡ *Cornelius à Lapide* taking it expresly of the mothers

* Exod. 21. 22. The Septuagint seem to have taken יְלָד (death) for יֶלֶד a diminutive of a man: as *Cornel. à Lapid.* probably guesses. † Castal. *Si pernicies non fuerit*: Ours, it no mischief follow. ‡ Cornel. à Lap. in Exod. 21.

death

death, yet drawes the judgement out, in an equall length to the death of the childe, once animated; making no difference of the guilt; ſince the infants ſoule is of no leſſe worth, than hers that beares him.

In this caſe of the conception animated, I find the Caſuiſts much divided; Whiles ſome more tender than their fellowes, will not allow in the utmoſt extremity of a dying mother, a medicine that may be directly curative to be given her, if it ſhould be with any apparent danger of the childe; in caſe that the child may be probably drawne forth alive; which they doe upon this falſe and bloudily uncharitable ground, * that the child dying without Baptiſme, is liable to eternall damnation, which woefull danger therefore the mother ought

* Vel. ut alii, *Quorum minus certiſſimè in limbum deſcendunt ſine Baptiſmo.* Mart. Alphonſ. Vir. Epiſcop. Bullæ de abort.

to

to prevent, though with the certaine hazard of her own life: but the foundation of this judgement being unsound, (since to doome the children of believing Parents inevitably to hell for the want of that, which they are not possibly capable to receive, is too cruell and horrible) the structure must needes totter. These men whiles they professe themselves too carefull of the soule of the childe (which yet may perhaps be safer than their owne) seeme to bee somewhat too hard-hearted to the body of the mother.

* Others more probably hold, that if the case be utterly desperate; and it bee certaine that both mother and childe must undoubtedly perish if some speedy remedy be not had; it may then be lawfull to make use of such receits as may possibly give some hopes to save the mother,

* Rodr. Sum. To. 1. c. 5. de Abort.

though not without ſome perill of the child.

But all this while, the intentions, and indeavours muſt be no other than preſervatory; however it pleaſeth God to order the events: Shortly, no man that purpoſely procureth an abortion, as ſuch, can waſh his hands from blood; No woman that wilfully acts, or ſuffers it, (however the ſecrecy may exempt her from the danger of humane lawes) can thinke to avoid thoſe judgments of the righteous God, which he hath charged upon murderers.

I cannot here therefore forbeare to give the world notice of the impious indulgence of a late Pope in this kind; *Sixtus quintus*, who in our time ſat in the See of *Rome*, finding the horrible effects of that liberty, which too many both ſecular and religious perſons tooke to themſelves in this matter of abortion; in a juſt deteſtation of that

damnable practice, thought meet in much fervour of spirit to set forth his *Bulla Cruciata*; than which there was never a more zealous piece published to the world; wherein that Pope pronounces all those, which have any hand in the acting or procuring of this wicked fact, of the ejecting of conceptions, whether animate or inanimate, formed, or informed, by potions, or medicaments, or any other meanes whatsoever, to have incurred both the crime and punishment of man slaughter: charging due execution to be done upon such persons accordingly: And withall in a direfull manner excommunicates them, and sends them to hell, (without repentance) reserving the absolution solely to himselfe and his successors.

Now comes a late * successor of his, *Gregory* 14; who finding the

* Vid Rodrig. ubi supra.

sentence

sentence too unreasonably hard for his petulant, and thriftie Italians, and, indeed, for all loose persons of both sexes; mitigates the matter; and, as a Spanish Casuist expresses it truly, in the very first yeare of his Pontificate in a certaine Constitution of his, dated at *Rome*, the last day of May, 1591. *delevit censuras, quas* Sixtus V. *imposuerat contra facientes, procurantes, &c.* aboliſht and took off those heavy censures, which * *Sixtus* had imposed; and reduced the terrible punishments by him ordained to be inflicted unto a poore bare irregularity; and determines, that any Confessor, allowed by the Ordinary, may absolve from this sin of procured abortion: By the sleightnesse of the censure, in effect, animating the sin: An act well becomming

* Constit. Greg. 14. *Qua dicit quod quivis Confessor approbatus ab Ordinario potest absolvere à peccato abortus.* Ibid.

the mother of Fornications: After all which Pandarisme, let all good Christians know, and resolve the crime to be no lesse than damnable.

But withall, let me advise you, (with * *Martinus Vivaldus*) that what I have herein written against the procurers of abortions, may not be extended to the practise of those discreet Physitians, and Chirurgeans, who being called to for their aide in difficult and hopelesse child-births, prescribe to the woman in travaile such receits, as may be like to hasten her delivery, (whether the childe be a live or dead:) forasmuch as the conception is now at the full maturity, and the indeavour of these Artists is not to force an abortement, but to bring forward a naturall birth, to the preservation of the mother, or the childe, or both.

* Marc. Alphons. Vivald. explic. Bull Cruc.

CASE

Case IV.

Whether a man adjudged to perpetuall impriſonment, or death, may in conſcience indeavour, and practiſe an eſcape.

WHat the Civill or Common Lawes have in this caſe determined for the publique good, comes not within the compaſſe of our diſquiſition: Let the Guardians, and Miniſters of thoſe Lawes looke carefully to the juſt execution of them accordingly: The queſtion is onely of the law of private conſcience, how farre that will allow a man to goe in caſe of a ſentence paſſed upon him, whether of death or bonds.

And firſt of all; if ſuch ſentence be unjuſtly paſſed upon an innocent, no man can doubt, but that hee may moſt lawfully, by all juſt meanes, worke his owne *freedome: But if

an offender, what may he doe? The common opinion of Casuists is peremptory; * That he that is kept in prison for any offence wherupon may follow death, or losse of limb, whether the crime be publique or private, may lawfully flee from his imprisonment, and may for that purpose use those helps of filing, or mining, which conduce to this purpose: Their ground is, that universall rule, and instinct of selfe-preservation, which is naturall to every creature; much more eminent in man, who is furnished with better faculties than the rest, for the working of his own indemnity: Whereto is added that main consideration of *Aquinas*; That no man is bound to kill himselfe, but onely doomed to suffer death; not therefore bound to doe that upon which death will inevitably follow, which

* *Qui retinetur in carcere propter aliquod delictum, &c.* Rodrig. Sum. cap. 40.

is

is to wait in priſon for the ſtroak, if he may avoid it; it is enough that he patiently ſubmits to what the law forces upon him, though he doe not cooperate to his owne deſtruction: his ſentence abridges him of power, not of will to depart: Whereupon they have gone ſo far, as to hold it in point of conſcience not unlawfull for the friends of the impriſoned, to conveigh unto him files, and cords, or other inſtruments uſefull for their eſcape: But herein ſome better-adviſed Doctors have juſtly diſſented from them; as thoſe, whoſe Judgement hath not beene more favourable to malefactors, than dangerous and prejudiciall to the Common-wealth: for how ſafe ſoever this might ſeeme in lighter treſpaſſes, yet if this might be allowed, as in conſcience lawfull to be done to the reſcue of murtherers, traytors, or ſuch other flagitious villains, what infinite miſchiefe might

it produce? and what were this other than to invite men to be accessary to those crimes, which the law in a due way intends to punish? Certainly, by how much a more laudable act of Justice it is, to free the society of men from such wicked miscreants, by so much more sinfull and odious an office it were, to use these sinister means for their exemption from the due course of Justice; But howsoever for another man to yield such unlawfull aide, is no better than a foule affront of publique Justice, and enwrappes the agent in a partnership of crime; yet the law of nature puts this liberty upon the restrained party himselfe, both to wish and indeavour his owne deliverance: Although not so; but that if the prisoner have ingaged himselfe by solemne promise, and oath to his keeper, not to depart out of his custody; honesty must prevaile above nature; and he ought rather

to

to dye, than violate that bond which is ſtronger than his irons: Very Heathens have by their example taught us this leſſon; to regard our fidelity, more than our life: Thus it ſhould be, and is, with thoſe that are truly Chriſtian and ingenuous, under whatever capacity; but in the caſe of graceleſſe and felonious perſons, Goalers have reaſon to looke to their bolts and locks; knowing (according to the old rule of wiſe *Thales*) that he who hath not ſtuck at one villany, will eaſily ſwallow another; perjury will eaſily downe with him, that hath made no bones of murther.

But where the caſe is entire, no man can blame a captive if he would bee free; and if hee may untie the knot of a cord wherewith he was bound; why may he not unrivet, or grate an iron wherewith he is fettered? for ſo much as hee is not bound to yeild,

or continue a consent to his owne durance: This charge lies upon the keeper, not the prisoner.

A man that is condemned to perish by famine, yet if he can come by sustenance may receive, and eat it: That Athenian malefactor, in * *Valerius Maximus*, sentenced to die by hunger, was never found fault with, that he maintained himself in his dungeon by the brests of his good-natur'd daughter.

And if a man be condemned to be devoured by a Lion, there can be no reason why he should not (what he may) resist that furious beast, and save his owne life.

But when I see our Romish Casuists so zealously tender in the case of Religious persons, as that they will not allow them, upon a just imprisonment, to stirre out of those grates, whereto they are confined, by

* Val Max l. 5. Dom. Sot. de Jure, &c. l. 5 q. 5

the

the doom of their Prelates; And when I see the brave resolutions of holy Martyrs, that even when the doores were set open, would not flee from a threatned death, I cannot but conclude, that whatsoever nature suggests to a man, to work for his owne life or liberty, when it is forfeited to Justice, yet that it is meet and commendable in a true penitent, when he findes the doome of death or perpetuall durance justly passed upon him, humbly to submit to the sentence; and not entertaine the motions and meanes of a projected evasiō: but meekly to stoop unto lawfull authority, and to wait upon the issue whether of Justice, or Mercy; and at the worst, to say with the Poet, *Merui, nec deprecor.*

CASE

Case V.

Whether and how far a man may be urged to an Oath.

AN Oath, as it is a sacred thing, so it must bee no otherwise than holily used; whether on the part of the giver, or taker; and therefore may neither be rashly uttered, nor unduly tendered upon sleight, or unwarrantable occasions: We have not to doe here with a promissory oath, the obligation whereof is for another inquisition; It is the assertory oath that is now under our hand; which the great God by whom we sweare, hath ordained to be an end of controversies; *at the mouth of two or three witnesses shall the matter be established*, Deuter. 19. 15. and 17. 6. As for secular Titles of *mine*, or *thine*; the propriety of goods, or lands, next after written evidences, testimonies upon Oath must

must needs be held most fitly decisive the only scruples are wont to be made in causes criminall.

1. Wherein surely we may lay this undoubted ground, that no man is to be proceeded against without an accuser, and that accusation must be made good by lawfull witnesses: A Judge may not cast any man upon the plea of his owne ey-sight: should this liberty be granted, Innocence might suffer, and Malice triumph: Neither may any man be condemned upon hear-say; which how commonly false it is, daily experience sufficiently evinceth.

On the other side, men are apt enough to connive at each others wickednesse; and every man is loath to be an Informer, whether out of the envy of the office, or out of the conscience of his owne obnoxiousnesse.

And yet thirdly, it is requisite that care should bee taken, and all due means

meanes used by authority, that the world may not be over-run with wickednesse, but that vice may be found out, repressed, punished.

There cannot, fourthly, be devised a fairer, and more probable course for the effecting hereof, than by the discovery upon oaths of the Officers and Jurors in Assizes, and Sessions; and of Churchwardens, and Sidemen in Visitations.

The ground of all presentments to, or by these men must be either their owne knowledge, or publique fame, or an avowed information. Any of these gives a lawful hint to the Judge, whether Ecclesiasticall or Civill, to take full triall of the cause and person.

Knowledge is alwayes certain, but fame is often a lyar; and therefore every idle rumour must not be straight taken upon trust; the inconvenience and injury whereof I have often seen:

ſcene; when ſome malicious perſon, deſiring to doe a deſpight to an innocent Neighbour, raiſes a cauſeleſſe ſlander againſt him, whiſpers it to ſome diſ-affected Goſſips; this flies to the eare of an Apparitor; hee ſtraight runs to the Office, and ſuggeſts a publique fame; the honeſt man is called into the Court; his reputation is blurred in being but ſummoned; and after all his trouble and diſgrace hath his amends in his own hands.

The rule of ſome Caſuiſts, that ten tongues make a fame, is groundleſſe and inſufficient; neither is the number ſo much to be regarded as the quality of the perſons.

If a whole pack of debauched companions ſhall conſpire to ſtaine the good name of an innocent (as we have too often knowne) it were a ſhamefull injuſtice to allow them the Authors of a fame: the more judicious

ous Doctors have defined a publique fame by the voice of the greater part of that Community, wherein it is ſpread, whether Towne, Pariſh, City: and therein of thoſe that are diſcreet, honeſt, well-behaved. We are wont to ſay, Where there is much ſmoake, there is likely ſome fire: an univerſall report from ſuch mouthes therefore, may well give occaſion to a further inquiry. If any mans zeale againſt vice will make it a matter of inſtance, the caſe is cleare, and the proceeding unqueſtionable; But if it be matter of meere office, the carriage of the proceſſe may bee liable to doubt; Herein it is meet ſuch courſe be taken, as that neither a notorious evill may be ſmothered, nor yet innocence injured: To which purpoſe the moſt confident reporter may be called upon (becauſe fame hath too many tongues to ſpeak at once) to lay forth the grounds of that his whiſpered crimination; and

if

if the Circumſtances appeare pregnant, and the Suſpicions ſtrong, I ſee not why the Eccleſiaſticall Judge (for with him onely in this caſe I profeſſe to meddle) may not convent the perſon accuſed, lay before him the crime which is ſecretly charged upon him; and either upon his ingenuous confeſſion, enjoyn him ſuch ſatisfction to the ſcandalized Corgregation as may be moſt fit, or upon his denyall urge him to cleare himſelfe by lawfull witneſſes, of the crime objected; Or why he may not, if hee ſee further cauſe, appoint a diſcreet and able proſecutor to follow the buſineſs in a legall way; upon whom the accuſed, if he be found guiltleſs, may right himſelfe.

But all this while, I finde no juſt place for an oath to be adminiſtred to a man for his owne accuſation; which certainly, is altogether both illegall and unreaſonable; If a man will

will voluntarily offer to cleare himselfe by an Oath, out of the assurednesse of his owne innocence, he may be allowed to be heard, but this may neither be pressed to be done, nor yet conclusive, when it is done; for both every man is apt to be partiall in his owne case, and he that durst act a foule sin will dare to face it. It was ever therefore lawfull (even when Ecclesiasticall Inquisitions were at the highest) for a man to refuse answer to such questions upon oath, or otherwise, which tended to his owne impeachment; as unjustly, and unwarrantably proposed: and it was but a young determination of * *Aquinas*, when he was onely a Batchelour, in the Generall Chapter at *Paris*, contradicted by all the ancient Graduates there, that when the crime is notorious, and the authour unknowne, the

* Silvestr. V. Correct. Dom. Soc. l. 5. de Jure, q. 4 Less. de Judice l. 2. c. 29.

secret

ſecret offender is bound upon his Ordinaries charge and command, to reveale himſelfe.

Even the Spaniſh Caſuiſts, the great favourers and abettors of the Inquiſition, teach that the Judge may not of himſelfe begin an inquiry, but muſt be led by ſomething which may open a way to his ſearch, and as it were force him to his proceeding, *ex officio*, as publique notice, infamie, common ſuſpicion, complaint, otherwiſe, the whole proceſſe is void in law; although herein ſome of them goe too far in favour of their great *Diana*, that where the crime is known, and the author unknowne, the Judge may in a generality inquire of him that did it, and if he have any private information (though without any publique fame foregoing) he may in ſome caſes, raiſe a particular inquiſition upon the party, and call him to defend himſelfe; which courſe certainly,

certainly, gives too much advantage to private malice; and opens too much way to the wronging of Innocence. The faire way of proceedings in all Christian Judicatures, should be, by Accuser, Witnesse, and Judge, in distinct persons openly knowne; the Accuser complaines, the Witnesse evinceth, the Judge sentences: The one may not be the other; much lesse all three: Were that to be allowed, who could be innocent?

When a witnesse then is called before a competent Judge, to give evidence upon oath concerning a third person, in a matter cognoscible by that Jurisdiction, he is bound to swear *in truth, in judgement, and in righteousnesse*, Jer. 4. 2. as for his owne concernments, he must referre himself to the testimonies and oathes of others.

CASE

Case VI.

Whether a Judge may upon allegations, proofes, and evidences of others, condemn a man to death, whom he himſelf certainly knows to be innocent.

THe queſtion hath undergone much agitation; The ſtreame of all ancient Divines, and Caſuiſts runs upon the affirmative; their ground is, that the Judge, as he is a publique perſon, ſo in the ſeat of Judicature, he muſt exerciſe a publique authority; and therefore waving his private knowledge and intereſt, muſt ſentence according to the allegations and proofes brought before him; ſince he is a Judge of the cauſe, not of the law; whereof he is to be the ſervant, not the maſter: There he ſits not to ſpeake his owne judgement, but to be the mouth of the law, and the law commands him to judge

judge according to the evidence; the evidence therefore being cleare and convictive, the doome can be no other than condemnatory.

For my part, I can more marvell at their judgement herein, than approve it; professing for the negative, with some fewer and latter Authors, upon these sure grounds.

It is an evident and undeniable law of God which must be the rule of all Judges; *The innocent and the righteous slay thou not*, *Exod.* 23.7. This is a Law neither to be avoided, nor dispensed with: Accusations and false witnesses cannot make a man other than innocent; they may make him to seeme so; in so much as those that know not the cause exactly, may perhaps be misled to condemne him in their judgments: But to the Judge, whose eyes were witnesses of the parties innocence, all the evidence in the world cannot make him other than guilt-

guiltleſſe; ſo as that Judge ſhall be guilty of blood, in ſlaying the innocent, and righteous.

Secondly, the law of judging according to allegations and proofs is a good generall direction in the common courſe of proceedings; but there are caſes wherein this law muſt vaile to an higher, which is the law of Conſcience: Woe be to that man who ſhall tye himſelfe ſo cloſe to the letter of the law, as to make ſhipwrack of conſcience; And that bird in his boſome will tell him, that if upon whatever pretences, he ſhall willingly condemne an innocent, he is no better than a murtherer.

Thirdly, it is not the bare letter of the law that wiſe men ſhould ſtand upon, but the drift and intention of the law; of that, we may in ſome ſenſe ſay as the Apoſtle did of an higher law, *The letter killeth.* Now every reaſonable man knowes that the intention

intention of the law, is to save and protect the innocent; to punish onely the guilty: The Judge therefore shall be a perverter of law, if, contrary to his knowledge, he shall follow the letter against the intention, in condemning an Innocent.

Let no man now tell me, that it is the law that condemnes the man, and not the Judge; This excuse will not serve before the Tribunall of heaven; The law hath no tongue; It is the Judge that is *lex loquens*; If he then shall pronounce that sentence which his owne heart tells him is unjust and cruell, what is he but an officious minister of injustice? But, indeed, what law ever said, Thou shalt kill that man whom thou knowest innocent, if false witnesse will sweare him guilty? This is but a false glosse set upon a true text, to countenance a man in being an instrument of evill.

What then is in this case to be done?

done? Surely, as I durſt no: acquit that Judge, who under what ever colour of law ſhould caſt away a known innocent, ſo I durſt not adviſe againſt plaine evidences and flat diſpoſitions, upon private knowledge, that man to be openly pronounced guiltleſſe, and thereby diſcharged; for as the one is a groſſe violation of juſtice; ſo were the other a publique affront to the law; and of dangerous conſequence to the weale-publique: Certainly, it could not but be extreamely unſafe, that ſuch a gappe ſhould bee opened to the liberty of judgement, that a private breſt ſhould be oppoſed (with an apparent prevalence) againſt publique convictions: our Caſuiſts have beaten their braines to finde out ſome ſuch evaſions as might ſave the innocent from death, and the Judge from blood-guiltineſſe: Herein therefore they adviſe the Judge to uſe ſome ſecret meanes to ſtop the accuſation,

or Indictment; (a course that might be as prejudiciall to justice, as a false sentence) to sift the witnesses apart, as in *Susanna*'s case, and by many subtile interrogations of the circumstances to finde their variance or contradiction. If that prevaile not, *Cajetan* goes so farre, as to determine it meet (which how it might stand with their law, he knowes, with ours it would not) that the Judge should before all the people give his oath, that hee knowes the party guiltlesse; as whom he himselfe saw at that very houre in a place far distant from that, wherein the fact is pretended to bee done: Yea* *Dominicus à Soto* could be content (if it might be done without scandall) that the prisoner might secretly be suffered to slip out of the gaole, and save himselfe by flight. Others think it the best way, that the Judge should put off the cause to a su-

* Dom. à Sot. de Jure, &c. l. 5. qu. 4.

perior

periour Bench; and that himselfe should (laying aside his scarlet) come to the Bar, and as a witnesse avow upon oath the innocence of the party, and the falsity of the accusation: Or lastly, if he should out of malice, or some other sinister ends (as of the forfeiture of some rich estate) be pressed by higher powers to passe the sentence on his own Bench, that he ought to lay downe his Commission, and to abdicate that power he hath, rather than to suffer it forced to a willing injustice.

And truly were the case mine, after all faire and lawfull indeavours to justifie the innocent, and to avoid the sentence, I should most willingly yeild to this last resolution: Yea, rather my selfe to undergoe the sentence of death, than to pronounce it on the knowne guiltlesse; hating the poore pusillanimity of *Dominicus à*

*Soto**, that passes a *nimis creditu rigidum*, upon so just a determination; and is so weakly tender of the Judges indempnity, that he will by no means heare of his wilfull deserting of his office on so capitall an occasion.

In the main cause of life and death, I cannot but allow and commend the judgement of *Leonardus Lessius*; but when the question is of matters civill, or lesse criminall, † I cannot but wonder at his flying off; in these where in the businesse is but pecuniary, or banishment, or losse of an office, he holds it lawfull for the Judge, (after he hath used all meanes to discover the falsenesse of the proofes, and to hinder the proceedings, if thus hee prevailes not) to passe sentence upon those allegations and probations; which himselfe knowes to be unjust.

* *Etenim quod homo, qui officio suo vivit, debeat tantam actutam facere, durum creditu est.* Dom. Sot. ubi supra. † In causis civilibus et minùs criminalibus

The

The reasons pretended are as poor as the opinion; * For, saith hee, the Common-wealth hath authority to dispose of the estates of the Subjects, and to translate them from one man to another, as may be found most availing to the pnblique good; and here there appeares just cause so to doe, lest the forme of publique judgements should be perverted, not without great scandall to the people; neither is there any way possible to help this particular mans inconvenience and losse; therefore the Common-wealth may ordaine that in such a case the Judge should follow the publique forme of Judicature, though hereby it falleth out that a guiltlesse man is undone in his fortunes; and yet his cause knowne to be good by him that condemnes it. Thus he.

But what a loose point is this?

* Less de Jure, &c. l. 2. de Judice Dub. 10. Quia resp. habeat authoritatem disponendi, &c.

why hath not a man as true propriety in his estate as his life? or what authority hath the Common-wealth, causelessly to take away a mans substance or inheritance being that he is the rightfull owner, more than a piece of himselfe? When his pattrimony is setled upon him, and his in a due course of law and undoubted right of possession, what just power can claime any such interest in it, as without any ground of offence to dispossess him? Or what necessity is there that the forme of publique judgements should be perverted, unlesse an honest defendant must be undone by false sentence? Or rather is not the forme of publique judgement perverted, when innocence suffers for the maintenance of a formality? Or how is the Judge other than a partner in the injury, if for want of his seasonable interposition a good cause is lost, and a false plea prevailes?

That

That therefore, which in the second place he alledgeth, that the Subject can have no reason to complaine of the Judge, for as much as it is out of his power to remedy the case, and to passe other sentence than is chalked forth by the rule of Law; might as well be alledged against him in the plea of life and death, wherein he will by no meanes allow the Judge this liberty of an undue commendation; neither is there any just pretence, why an honest and well-minded Judge should be so sparing in a case of life, and so too prodigall in matter of livelyhood.

As for this third reason, that the mis-judgement in case of a pecuniary damage or banishment, may be afterwards capable of being reversed, and upon a new Traverse the cause may be fetcht about at further leisure; whereas death once inflicted is past all power of revocation; It may well

inferre that therefore there should bee so much more deliberation, and care had in passing sentence upon capitall matters, than civill, by how much life is more prcious, and irrevocable, than our worldly substance; but it can never inferre that injustice should bee tolerable in the one, not in the other. Justice had wont to be painted blind-fold, with a paire of scales in her hand; wherefore else, but to imply that he, who would judge aright, must not look upon the issue or event, but must weigh impartially the true state of the cause in all the grounds, and circumstances thereof, and sentence accordingly? To say then that a Judge may passe a doome formally legall, but materially unjust, because the case upon a new suit may be righted, were no other than to say, I may lawfully wound a man, because I know how to heale him againe.

Shortly therefore, whether it be in causes

cauſes criminall, or civill, whether concerning life or eſtate, let thoſe who ſit in the ſeat of Judicature, as they will anſwer it before the great Judge of the World, reſolve (what event ſoever follow) to judge righteous judgement, not juſtifying the wicked, not condemning the innocent; both which are equally abominable in the ſight of the Almighty.

Case VII.

Whether, and in what caſes am I bound to be an accuſer of another.

TO be an accuſer of others, is a matter of much envy, and deteſtation, inſomuch as it is the ſtyle of the Devill himſelfe to be *accuſator fratrum*, an accuſer of the brethren: Yet not of his owne brethren in evill; It was never heard that one evill ſpirit accuſed another; but of *our bre-*

thren, Revelat. 12. 10. it was a voice from heaven which called him so: Saints on earth are the brethren of the glorious spirits in heaven; It is the wickednes of that malicious spirit to accuse Saints: But though the act be grown into hatred, in respect both of the Agent and of the Object; yet certainly there are cases wherein it will become the Saints to take upon them the person, and office of accusers.

Accusition therefore is either voluntary, or urged upon you by the charge of a superiour. Voluntary is either such as you are moved unto by the Conscience of some hainous and notorious crime committed, or to be committed by another, to the great dishonour of God, or danger of the common peace, whereto you are privy: or such as whereunto you are tyed by some former engagement of vow, or oath: In the former kinde;

a worthy Divine in our time travailing on the way, sees a leud man committing abominable filthinesse with a beast; the sinne was so foule and hatefull, that his heart would not suffer him to conceale it; hee therefore hastens to the next Justice, accuses the offender of that so unnaturall villany; the party is committed, endicted, and upon so reverend, though single, testimony found guilty.

Or, if in the case of a crime intended, you have secret, but sure intelligence, that a bloudy villaine hath plotted a treason against the sacred person of your Soveraigne, or a murther of your honest neighbour; which hee resolves to execute; should you keep this fire in your bosome, it might justly burn you. Whether it be therefore for the discovery of some horrible crime done, or for the prevention of some great mischief to be done, you must either be an accuser, or an accessary.

The

The obligation to accuse is yet stronger, where your former vow or oath hath fore-ingaged you to a just discovery; you have sworn to maintaine and defend his Majesty's royall Person, State, Dignity; and to make knowne those that wilfully impugne it; if now, you shall keep the secret counsels of such wicked designments, as you shall know to be against any of these, how can you escape to bee involved in a treason, lined with perjury?

These are accusations which your conscience will fetch from you, unasked? But if being called before lawfull authority, you shall be required upon oath, to testifie your knowledge even concerning offenders of an inferiour nature, you may not retract your witnesse, though it amount to no lesse than an Accusation. Yet there are cases, wherein a Testimony thus required, tending to an accusa-

tion,

tion, may be refused; As in case of duty, and neareneſſe of naturall, or civill relation; It were unreasonably unjust for a man to be prest with interrogations, or required to give accusatory testimonies in the case of parents, or children, or the partner of his bed: Or if a man out of remorse of conscience shall disclose a secret sin to you formerly done, in a desire to receive counsaile, and comfort from you; you ought rather to endure your soule to be forcht out of your body, than that secret to bee drawn out of your lips. Or if the question be illegal, as those that tend directly to your own prejudice, or those which are moved concerning hidden offences, not before notified by publique fame, or any lawfull ground of injury, which therefore the Judge hath no power to ask. In these cases, if no more, the refusall of an accusation, though required, is no other than justifiable.

But

But where neither the conscience of the horridnesse of a crime done, nor prevention of a crime intended, nor duty of obedience to a lawfull authority, nor the bond of an inviolable pre-ingagement, call you to the Bar; It is not a more uncharitable, than thanklesse office to bee an accuser: Hence it is that Delators, and Informers, have in all happy and well-governed States, been ever held an infamous and odious kinde of Cattell. A *Tiberius*, and a *Dominian*, might give both countenance and reward to them, as being meet factors for their tyranny, but a *Vespasian*, and *Titus*, and *Antonius Pius*, and *Macrinus*, of whatever other Princes carryed a tender care to the peace and welfare of their Subjects, whipt them in the publique Amphitheater, and abandoned them out of their dominions, as pernicious, and intolerable. And as these mercenary Flies, whether of State,

State, or of Religion, are justly hatefull, next to the publique executioners; so certainly, those busie spirited-men, which out of the itching humour of medling, run from house to house, with tales of private detraction, may well challenge the next roome in our detestation. This together with the other, is that which God so strictly forbids in his Law, *Levit.*19.16. *Thou shalt not goe up and downe as a Talebearer amongst thy people, neither shalt thou stand against the blood of thy neighbour: I am the Lord.* A practice which wise *Solomon*, though a great King; and (as one would think) out of the reach of tongues, cryes downe with much feeling bitternesse; Prov. 18 8. *The words of the Tale bearer are as wounds, and they goe downe into the innermost parts of the belly:* No lesse than five severall times in his divine * Proverbs, inveighing sharply (as if

* Prov. 11.13. 20.19. 26.20. 26.2.

him-

himselfe had been stung in this kinde against these close back-biting calumniations.

Shortly then, accuse when you are forced, either by the foulenesse of the fact, or the necessity of your duty: otherwise reserve your tongue for better offices.

Case VIII.

Whether a prisoner indicted of a felonious act which he hath committed, and interrogated by the Judge concerning the same, may stand upon the deniall, and plead Not guilty.

The Casuists vary, and out of respect to their owne Lawes, are much perplexed in their resolutions: making the great scruple to be in the Juridicall interrogations, (which if the Judge have not proceeded in the due forme of Law required in such cases)

cases may warrant the offenders denial; and secondly, making difference of the quality of the offence, and danger of the punishment, which if no lesse than capitall, may (say they *) give just ground to the accused party, either to conceale the truth, or to answer with such amphibolies, and equivocations, as may serve to his owne preservation; In which course, naturall equity will beare him out, which allowes every man to stand upon his owne defence: And the case I perceive is aggravated in forraigne parts, as by the Rack, so by an Oath administred to the person accused (which they call † *Juramentum calumniæ*) which *Lessius* justly calls a spirituall torture, by the vertue whereof, hee solemnely urged, not to deny what hee knowes, or believes to be true, concerning the bu-

* Rodriguez. Tract. Ordinis Judicialis cap. 10.
† Sotus l. 5. q 6. de Justi. 11. Rej. Art. 1.

finesse

sinesse questioned; A practise, which I cannot blame * *Lessius*, if he professe to wish that the Pope, and all secular Princes, would joyne together to abrogate; as being an evident occasion of much perjury. To lay down and determine the case as it stands with us in our ordinary proceedings of justice, it must be premised:

1. To deny a knowne truth, and to averre a willfull lye, cannot be other than a sin.

2. There is a vast difference betwixt concealing a truth and denying it.

3. It may be sometimes lawfull to conceale some Truths, though never lawfull to deny or contradict them.

4. No man can be bound directly to accuse himselfe,

5. It is consonant to naturall equi-

* Lib. de Just. & Jur. cap 13. dub. 32.

ty,

ty, that a man for the saving of his life should use the helpe of all evasions that are not sinfull.

6. It cannot be sinfull to put himselfe upon a legall triall in a case importing his life.

7. There is no place for a legall triall, where there is an absolute confession of guiltinesse.

These positions being pre-required, I say, that it is lawfull for the prisoner, though convinced in his conscience of the fact, yet to plead Not guilty to the Indictment at the Barre: for as much as he doth therein, according to the sense both of the Judge, and Jury, onely hide and keepe back that Truth, the finding out, and eviction whereof, lyes upon their further search and proofe, so as he doth, in pleading *Not guilty*, in effect as good as say, What ever I finde in my selfe, I have no reason to confesse my guiltinesse; I stand upon my lawfull de-

fence

fence, and cast my selfe upon my just tryall; Yielding my selfe onely so far guilty, as your evidence and proofes can make me: let Justice passe upon me, I have no reason to draw on my owne condemnation: The plea thus construed is lawfull, and just; wherein not the shuffling equivocations of the offendor, but the upright verdict of a legall Jury must carry the cause: to which purpose, that which sounds as a deniall in the accused, is nothing else but a professed referring himselfe to a juridicall triall of that fact, which he is not bound to confesse.

But when the hand of God hath once found out the man in his sin, and he finds himselfe legally convinced of his crime; it greatly behoves him (as *Joshuah* charged *Achan* after the lot had discovered his sin) to give glory to God, in a free and full confession of his wickednesse, and to be more open and ingenuous in his acknowledgement,

ledgement, than he was cloſe, and reſerved in his plea: wherein as he ſhall diſcharge his conſcience to that great and holy God, whom he hath offended, ſo he ſhall thus tender ſome kind of poore ſatisfaction to that Society of men, whom hee hath ſcandalized by his crime. In which regard I cannot but marvell at the ſtrange determination of learned * *Azpilcueta*, the Oracle of *Confeſſaries*, who teaches, that the priſoner, who being rightly interrogated by the Judge, ſtood ſtiffly in deniall of the fact, and is upon his Condemnation (carried to his execution, is not bound at his death to confeſſe the crime to the world, if he have before ſecretly whiſpered it in the ear of his ghoſtly father, and by him received abſolution.

A ſentence that allowes the ſmothering of truthes, and the ſtrangling of juſt ſatisfaction to thoſe who are

* Mart. Azpil. Navar. enchirid. cap. 25 num. 38.

concerned,

concerned, as patience, in the offence, and lastly, highly injurious to publique Justice; whose righteous sentence is by this meanes left questionable, and obnoxious to unjust censure.

How much more requisite were it that a publique confession should, in this case, save the labour of a private, whereby certainly, the soule of the offender would be more sensibly unloaded, justice better vindicated, more glory would accrew to God; and to men more satisfaction.

But however it be lawfull for the accused to stand upon these points of legality in the proceedings against him: yet for my owne part; should I be so farre given over, as to have my hand in bloud; and thereupon be arraigned at the barre of publique Justice; I should out of just remorse be the first man that should rise up against my selfe; and (which in other

mens

ments cases were utterly unlawfull) be my owne Accuser, Witnesse, and Judge: and this disposition I should rather commend in those, whose conscience hath inwardly convicted them for haynously criminous: that since they had not the grace to resist so flagitious a wickednesse, they may yet endeavour to expiate it, before men, with an ingenuous confession: as before God, with a deepe and serious repentance.

Case IX.

Whether, and how farre a man may take up armes in the publique quarrell of a war.

WArre is no other than a necessary evill, necessary in relation to peace: onely, as that without which so great a blessing cannot bee had: As the wise Woman said to

Joab,

Joab, 2 *Sam.* 20. 18. they ſhould firſt treat with the men of *Abel*, ere they ſmite: & upon the charge of the Lord of hoſts, *Deut.* 20. 10. conditions muſt firſt be tendered even to heathen enemies, before any acts of hoſtility ſhall be exerciſed; where this which is the worſt of all remedies, proves needfull, if you ask how farre it is lawfull to ingage; I muſt aske you, (ere I can returne anſwer) firſt of the juſtice of the quarrell: for ſurely where the warre is knowne to be unjuſt, the willing abettors of it cannot waſh their hands from blood: To make a warre juſt (as our Caſuiſts rightly) there muſt bee a lawfull authority to raiſe it; a juſt ground whereon to raiſe it; due formes and conditions in the raiſing, managing, and ceſſation of it: That no authority leſſe than ſupreame can wage a warre, it is cleare in nature; for that none other beſides it can have power

of

of life and death; which both must lye at the publique [illegible] in warre.

That none but a just and weighty cause can be the ground of a warre, every mans reason apprehends; for how precious a blessing had that need to bee, that is held worth the purchasing with the price of so much bloud; and how heavy a curse must that needes bee, which can onely be remedied, or prevented by so grievous a judgement as war?

That due termes and conditions are requisite to bee offered ere warre be undertaken; and observed in the managing and ceasing of it, humanity it self teacheth us; without which men should run upon one another with no lesse fury and disorder than beasts; not staying for any capitulation but the first advantage; nor terminating their discord in any thing but utter destruction.

Where all or any of these are wan-

ting, the warre cannot be just: and where it is known not to be such, woe be to those hands that are willingly active in prosecuting it.

Now the care of all these three maine requisites must lie chiefly upon that Power, which is entrusted by the Almighty, with the over-ruling of publique affaires: For the Subject, as he is bound to an implicite reliance upon the command of the supreame power; so (unlesse it be in a case notoriously apparent to be unjust) must yeild a blind-fold obedience to authority; going whither he is led, and doing what he is bidden. But if the case be such, as that his heart is fully convinced of the injustice of the enterprise, and that he clearly finds that he is charged to smite Innocence, and to him, against God; I cannot blame him, if with *Sauls* footmen (when they were commanded to fall upon the Priests of the Lord) he withhold his

his hand, and craving pardon, ſhew leſſe readineſſe to act, than to ſuffer.

In the ſecond place, I muſt aske you with what intentions you addreſſe your ſelfe to the field; if it be out of the conſcience of maintaining a juſt cauſe, if out of a loyall obedience to lawfull authority: I ſhall bid you go on, and proſper: but if either malice to the parties oppoſed, and therein deſire of revenge, or a baſe covetouſneſſe of pay, or hope and deſire of plunder have put you into armes; repent and withdraw: For what can be more ſordid or cruell, than to be hired for dayes-wages to ſhed innocent blood? Or what can bee more horribly miſchievous for a Man, than to kill, that hee may ſteale?

Upon your anſwer to theſe queſtions it will be eaſie for mee to returne mine; In a juſt quarrell, being thereto lawfully called, you may fight;

warrantable authority hath put the ſwore into your hand; you may uſe it. But take heed that you uſe it with that moderation, and with thoſe affections that are meet: Even an authorized hand may offend in ſtriking. Magiſtrates themſelves, if there be revenge in their executions, doe no other than murder: Far be it from you to take pleaſure in bloud, and to enjoy another mans deſtruction: If (eſpecially in thoſe warres that are inteſtine) you ſhall mingle your teares with the blood which you are forced to ſpill, it may well become Chriſtian fortitude.

Shortly, doe you enter into your armes, impreſt, or voluntary? If the former, you have nothing but your owne heart to looke unto for a fit diſpoſition: That Power, whom you juſtly obey, muſt anſwer for the cauſe; If the latter, you have reaſon diligently to examine all the neceſ-

sary points, of the power, of the cause, of your intentions: as well considering that in a warre it is no lesse impossible that both sides should be in the right, than that in a contradiction both parts should be true: Here therefore your will makes it selfe the Judg of all three; and (if any of them faile) leaves you answerable for all miscarriages; so as you had need to be carefully inquisitive, in this case, upon what grounds you goe; that so (whatsoever may befall) a good conscience may beare you out in the greatest difficulties, and saddest events that are wont to attend upon warre.

Case X.

Whether and how farre a man may act towards his own Death.

DIrectly to intend or endeavour that, which may worke his owne death, is abominably wicked, and no lesse than the worst murder.

For if a man may not kill another, much lesse himselfe, by how much he is nearer to himselfe than to another: and certainely if we must regulate our love to another by that to our selves, it must follow that love to our selves must take up the first roome in our hearts: and that love cannot but be accompanied with a detestation of any thing that may bee harmefull to our selves. Doubtlesse, many that can be cruell to another, are favourable enough to themselves; but never man that could be cruell to himself would be sparing to another's blood. To

To will or attempt this is highly injurious to that God, whose we onely are, who hath committed our life as a most precious thing to our trust, for his use, more than our owne; and will require from us an account of our managing of it, and our parting from it. It is a foule misprision in those men, that make account of themselves as their owne, and therefore that they are the absolute Lords of their life: Did they give themselves their owne being? had they nothing but meere nature in them? can they but acknowledge an higher hand in their formation, and animating? What a wrong were it therefore to the great Lord and giver of life, to steale out of the world, without his leave that placed us there? But much more if Christians, they know themselves, besides, dearly paid for, and therefore not in their own disposing, but in his that bought

them. Secondly, most desperately injurious to our selves, as incurring thereby a certaine damnation (for ought appeares to lookers on) for ever, of those soules which have wilfully broken Gods more easie, and temporary prison, to put themselves upon the direfull prison of Satan to all eternity.

Nature it selfe, though not enlightened with the knowledge, of the estate of another world, found cause to abhor this practice: However the Stoicall Philosophers, and some high Roman spirits following their doctrine, have beene liberall of their lives; the *Thebans* of old professed detestation of this worst of prodigalities: And the *Athenians* enacted that the hand, which should be guilty of such an act, should be cut off, and kept unburied; And it was wisely ordained by that Grecian Commonwealth, when their Virgins (out of a peevish

peeviſh diſcontentment) were growne into a ſelfe-killing humour, that the bodies of ſuch offenders ſhould bee dragged naked though the ſtreets of the City; the ſhame whereof ſtopped the courſe of that mad reſolution.

It is not the heavieſt of croſſes, or the ſharpeſt bodily anguiſh that can warrant ſo foule an act. Well was it turned off by *Antiſthenes* of old, when in the extremity of his paine he cried out, Oh who will free me from this torment! and *Diogenes* reached him a poynard, wherewith to diſpatch himſelfe: Nay, ſaid hee, I ſaid, from my torment, not from my life: as well knowing it neither ſafe nor eaſie, to part with our ſelves upon ſuch termes.

Farre, farre be it from us to put into this ranke and file thoſe worthy Martyrs, which in the fervour of their holy zeale have put themſelves forward to martyrdome, and have cou-

rageously prevented the lust and fury of Tyrants, to keep their chastity, and faith inviolable. I looke upon these as more fit objects of wonder, than either of censure, or imitation. For these (whom wee may well match with *Sampson*, and *Eleazar*) what Gods spirit wrought in them, hee knowes that gave it; Rules are they by which we live, not examples.

Secondly, However wee may not by any meanes directly act to the cutting off the thred of life; yet I cannot but yeild with learned * *Lessius*, that there may fall out cases, wherein a man may (upon just cause) doe, or forbeare something whereupon death may indirectly ensue: Indirectly, I say, not with an intention of such issue: for it is not an universall charge of God, that no man should upon any occasion expose his life to a probable danger; if so, there would be

* Less. de Jure l. 2. c. 9. dub. 6.

no

no warre, no traffique: but onely that he ſhould not cauſeleſly hazard himſelfe; nor with a reſolution of wilfull miſcarriage.

To thoſe inſtances hee gives of a ſouldier that muſt keep his ſtation, though it coſt him life: of a priſoner that may forbeare to flee out of priſon, though the doores be open: of a man condemn'd to dye by hunger, in whoſe power it is to refuſe a ſuſtenance offered: of a man that latches the weapon in his owne body to ſave his Prince: or of a friend, who when but one loafe is left to preſerve the life of two, refraines from his part and dyes firſt: or that ſuffers another to take that planke in a ſhipwrack, which himſelfe might have prepoſſeſſed, as truſting to the oares of his armes: or that puts himſelfe into an infected houſe out of meer charity to tend the ſick, though hee know the contagion deadly; or in a Sea-fight

blowes

blows up the deck with gun-powder, not without his own danger; or when the house is on fire, casts himselfe out at the window with an extreame hazard: To these, I say, may be added many more; as the cutting off a limb to stop the course of a Gangreene; to make an adventure of a dangerous incision in the body, to draw forth the stone in the bladde; the taking of a large dose of opiate pills, to ease a mortall extremity; or lastly, when a man is already seized on by death, the receiving of some such powerfull medicine, as may facilitate his passage (the defect of which care and art, the eminently-learned Lord * *Verulam* justly complaines of in Physitians:) In these, and the like cases, a man may lawfully doe these things which may tend, in the event to his owne death, though without an intention of procuring it.

* *Euthanasia.* LVerul. Adv. of Learn.

And

And unto this head must bee referred those infinite examples of deadly sufferings for good causes, willingly embraced for conscience sake. The seven Brethren in the *Maccabees*, (alluded to by St. *Paul* to his *Hebrewes*, *Heb.* 11.35.) will and must rather endure the butchering of their owne flesh, than the eating of Swines flesh, in a willing affront of their Law: *Daniel* will rather dye than not pray. *Shadrach*, *Meshach*, and *Abednego*, will rather fall downe bound into the fiery Fornace seven-fold heated, than fall down before the golden Image.

And every right-disposed Christian will rather welcome death than yeild to a willing act of Idolatry, Rebellion, Witchcraft: If hereupon death follow by the infliction of others, they are sinfull agents, hee is an innocent sufferer.

As for that scruple among our Casuists, whether a man condemned to

dye

dye by poyson, may take the deadly draught that is brought him; it is such, as wise *Socrates* never made of old, when the *Athenians* tendred him his hemlock; and indeede it may as well be disputed, whether a man condemned to dye by the Axe, may quietly lay downe his head upon the Blocke, and not, but upon force, yeild to that fatall stroke. A juster scruple is, whether a man condemned to a certaine and painefull death, which hee cannot possibly eschew, may make choice rather of a more easie passage out of the world, wherein I marvell at the indulgence of some Doctors, that would either excuse, or mince the matter. For although I cannot blame that naturall disposition in any creature, to shrinke from pain, and to affect (what it may) the shifting from extremity of miserie: yet for a Christian so to doe it, as to draw a greater mischiefe to himselfe,

ſelfe, and an apparent danger to his ſoule, it cannot juſtly beare any other than a hard conſtruction. For thus to carve himſelfe of Juſtice, is manifeſtly to violate lawfull authority; and whiles he would avoid a ſhort pain, to incur the ſhame and ſin of a ſelfe-executioner.

But if in that way, wherein the doome of death is paſſed, a man can give himſelfe eaſe, or ſpeed of diſſolution (as when a Martyr being adjudg'd to the fire, uſe the helpe of a bagge of Gun-powder, to expedite his paſſage) it cannot be any way judged unlawfull: The ſentence is obeyed, the execution is accordingly done; and, if the patient have found a ſhorter way to that end which is appointed him, what offence can this be either to the Law, or to the Judge?

RESO-

RESO

RESOLUTIONS.

The third Decade.

Cases of Piety and Religion.

CASE I.

Whether upon the appearance of Evill Spirits wee may hold discourse with them; and how we may demean our selves concerning them.

THat there are evill spirits, is no less certaine than that there are men: None but a Sadducee, or an Atheist can make question of it.

That evill spirits have given certaine

taine proofes of their presence with men, both in visible apparitions, and in the possessions of places, and bodies, is no lesse manifest, than that we have soules, whereby they are discerned.

Their appearances are not wont to be without grievous inconveniences; whether in respect of our dreadfulnesse, or their dangerous insinuations.

It is the great mercy of the God of Spirits, that hee hath bound up the evill Angels in the chaines of darkenesse, restraining them from those frequent, and horrible appearances which they would otherwise make to the terrour, and consternation of his weak creatures.

Whensoever it pleaseth the Almighty, for his owne holy purposes, so farre to loosen, or lengthen the chaines of wicked spirits, as to suffer them to exhibit themselves in some assumed

assumed shapes unto men, it cannot but mainly import us to know, what our deportment should be concerning them. Doubtlesse to hold any faire termes of commerce, or peace, much more of amity and familiarity with them, were no better than to professe our selves enemies to God; for such an irreconcileable hostility there is betwixt the holy God, and these malignant spirits, that there can bee no place for a neutrality in our relation to them: so as hee is an absolute enemie to the one, that bids not open defiance to the other.

As therefore wee are wont by our silence to signifie our heart burning against any person (in that we abide not to speake unto those whom wee hate,) so must wee carry our selves towards evill spirits: And if they beginne with us, as that Devill did in in the Serpent with *Eve*; how unsafe and deadly it may bee to hold that with

with them, appeares in that first example of their onset, the issue whereof brought misery and mortality upon all mankinde; yea then, were our first parents in their innocency, and all earthly perfection: wee now so tainted with sinne, that Satan hath a kinde of party in us, even before his actuall temptations.

As therefore wee are wont to say that the fort that yeilds to parley is halfe won; so may it prove with us, if we shall give way to hold discourse with wicked spirits, who are farre too crafty for us to deale withall; having so evident an advantage of us, both in nature (we being flesh and blood, they spirituall wickednesse) and in duration, and experience, we being but of yesterday, they coetaneous with the world and time it selfe.

If you tell mee that our Saviour himselfe interchanged some speeches with the spirits whom he ejected; it

is

is eaſily anſwered, that this act of his was never intended for our imitation, ſith his omnipotence was no way obnoxious to their malice, our weakneſs is.

I cannot therefore but marvell at the boldneſſe of thoſe men, who profeſſing no ſmall degree of holineſſe, have dared to hold familiar talk with evill ſpirits, and could be content to make uſe of them for intelligence; as the famous Jeſuite in our time, *Pere Cotton*, who having provided 50. queſtions to be propounded to a Demoniack (ſome concerning matters of learning, ſome other matters of State, concerning the then French King and the King of *England*) and having them written down under his owne hand to that purpoſe; being queſtioned concerning it, anſwered, that he had licence from *Rome* to tender thoſe demands: as I received it upon certaine relation from the learned

learned Dr. *Tilenus* with many pregnant and undeniable circumstances, which I need not here expresse. Although this need not seeme strange to me, when I finde that * *Navarre* determines plainly, that when evill spirits are present (not by our invocation) as in possessed bodies, it is lawfull to move questions to them, (so it be without our pacts to them, or pact with them for the profit of others; yea thus to confer with them, even out of vanity, or curiosity, is but venial at the most: Thus he, with whom † *Lessius* goes so far as to say, *Licitum est petere verbo à Diabolo ut nocere desinat*, &c. It is lawfull to move the Devill in words to cease from hurting, so that it be not done by way of deprecation, or in a friendly compliance, but by way of indignation: A distinction which I confesse past the ca-

* Navarr. Enchir. cap. 11. n. 38. † Less. l. 2. de magis cap. 44. dub. 6.

pacity

pacity of my apprehension; who have not the wit to conceive how a man can move without implying a kinde of suite, and how any suite can consist with an indignation.

It savours yet of a more heroicall spirit, which the Church of *Rome* professeth to teach and practice, the ejection of evill spirits by an imperious way of command, having committed to her Exorcists a power of Adjuration, to which the worst of Devils must be subject, a power more easily arrogated, than really exercised: Indeed, this over-ruling authority was eminently conspicuous, not onely in the selected twelve, and the seventy Disciples of Christ, who returned from their Embassie with joy, (*Luk.* 10. 17.) that the Devils were subject to them through his name, but even in their holy Successors of the Primitive Church, whiles the miraculous gifts of the holy Ghost were sensibly poured

red out upon men; but if they will be ſtill challenging the ſame power, why doe they not as well lay claime to the ſpeaking of ſtrange tongues? (*Mar.* 16.17.18) to the ſuper-naturall cure of all diſeaſes? to the treading on ſerpents and ſcorpions? to the drinking of poyſons without an Antidote? and if they muſt needs acknowledge theſe faculties above their reach, why doe they preſume to divide the Spirit from it ſelfe, arrogating to themſelves the power of the greateſt workes, whiles they are profeſſedly defective in the leaſt? wherein ſurely, as they are the true ſucceſſors of the ſonnes of *Sceva*, *Act.* 19. 13, 14, 15, 16. who would be adjuring of Devils by the name of Jeſus, whom S. *Paul* preached, ſo they can looke for no other intertainment than they found from thoſe Demoniacks, which was to be baffled, and beaten, and wounded.

Eſpecially,

Especially, if we consider the foule superstition, and grosse magick, which they make use of in their Conjurations; by their owne vainely-devised Exorcismes, scoffing a supernaturall vertue upon drugges, and herbes, for the dispelling, and staving off all evill spirits; Because the bookes are not perhaps obvious, take but a taste in one, or two: * In the *treasure* of *Exorcismes*, there is this following Benediction of Rue, to be put into an hallowed paper, and to be carried about you and smelled at for the repelling of the Invasion of Devils †. I conjure thee ô thou creature of Rue, by the holy Lord, the Father, the Almighty and Eternall God, which bringeth forth grasse in the moun-

* *Thesaurus Exorcismorum; atque Conjurationum terribilium, &c.* Tract. *Dispersio dæmonum. Fratris Petrii Polydori Patavini. Ord. Minorum Conventualium* † Tit. applicabile. 3. *Rutæ in charta benedictæ super se portandæ ob faciendæ, ad omnem invasionem diabolicam repellendam.*

taines, and herbes for the use of man: And which by the Apostle of thy Sonne our Lord Jesus Christ, hast taught, That the weake should eat Herbes: I conjure thee that thou bee blessed, and sanctifyed to retaine this invisible power and vertue, that whosoever shall carry thee about him, or shall smell to thee, may be free from all the uncleanesse of Diabolicall infatuation; and that all Devills, and all Witchcrafts may speedily fall from him, as herbes or grasse of the earth: through the same our Lord Jesus Christ, which shall come to judge the quick and the dead, and the world by fire.* The like is prescribed to be done to the seedes of *Hypericon* or St. *Johns wort.*

* Adde to this, the horrible fumigation to this purpose as it followes. I conjure thee O thou Creature of

* Applicabile. 15. Tit. *Profumigatio horribilis, ejusque vulgata benedictio.*

Galbanum,

Galbanum, *Sulphur*, *Assa fœtida*, *Aristolochium*, *Hypericon* and *Rue*, by the † living God, by the † true God, &c. by Jesus Christ, &c. that thou be for our defence; and that thou be made a perpetuall fumigation, exorcised, † blessed, and consecrated to the safety of us, and of all faithfull Christians, and that thou be a perpetuall punishment to all malignant spirits, and a most vehement, and infinite fire unto them, more than the fire and brimstone of hell is to the infernall spirits there, &c.

But what doe I trouble you with these dreadfull incantations, whereof the allowed bookes of Conjuration are full? To these I may adde their application of holy water, (wherein they place not a little confidence) which (saith *Lessius*) receives the force from the prayers of the Church, by the meanes whereof it comes to

* Less. ubi supra Dubit. 5.

passe, that it is assisted with divine power; which (as it were) rests upon it, and joynes with it, to the averting of all the infestations of the Devill: But faine would I learne where the Church hath any warrant from God to make any such suit; where any overture of promise to have it granted? what is their prayer without faith? and what is their faith without a word? But I leave these men (together with their Crosses, and Ceremonies, and holy reliques, wherein they put great trust in these cases) to their better informed thoughts. God open their eyes that they may see their errors.

For us, what our demeanour should be in case of the appearance, or molestation of evill spirits, we cannot desire a better patterne than S. *Paul*; his example is our all-sufficient instruction, 2 *Cor.* 12. 7, 8. who when the messenger of Satan was sent to buffet

buffet him, fell presently to his prayers; and instantly besought God thrice, that it might depart from him. Lo he that could command evill spirits out of the bodily possession of others; when it comes to his own turne to be buffeted by them, betakes himselfe to his prayers to that God, whose grace was sufficient for him: *Verse 9.* To them must we still have our recourse; if wee thus resist the Devil he shall flee from us: *Iam. 4. 7.* In the Primitive times, those that could command, needed not to sue: & therefore fasting and prayers, was an higher (as a more laborious) work (to this purpose) in the Disciples, than their imperative course of ejection; but for us, we that have no power to bid, must pray; Pray, not to those ill guests that they would depart; not to the blessed Virgin, or our Angel-Keeper that they would gard us from them, but to the great God of heaven,

who commands them to their chains: This is a sure and everlasting remedy, this is the onely certaine way to their foile, and our deliverance, and victory.

Case II.

How farre a secret pact with evill spirits doth extend, and what actions and events must be referred thereunto.

IT is a question of exceeding great use, and necessity, for certainly many thousands of honest, and well-minded Christians are in this kinde drawne into the snares of Satan, unwarily, and unwittingly: For the determining of it, these two grounds must be laid; First, that there is a double compact with Satan; One direct and open, wherein Magicians and Witches, upon wofull conditions and

and direfull ceremonies, enter into a mutuall covenant with evill ſpirits: The other, ſecret and indirect, wherein nothing is ſeen, or heard, or known to be agreed upon; onely by a cloſe implication, that is ſuggeſted and yeilded to be done, which is invisibly ſeconded by diabolicall operation.

The ſecond ground is, that whatſoever hath not a cauſe in nature according to Gods ordinary way muſt be wrought either by good or evill ſpirits: That it cannot bee ſuppoſed that good Angels ſhould bee at the command of ignorant, or vicious perſons, of either ſexe, to concurre with them in ſuperſtitious acts, done by meanes altogether in themſelves ineffectable and unwarrantable: and therefore that the Devill hath an unſeene hand in theſe effects, which hee marvailouſly brings about, for the winning of credit with the world, and for the obliging and engaging of his

owne Clients: of this kinde there is too lamentably much variety in common experience: Take an handfull, if you please, out of a full sack: let the first be, that authentick charme of the Gospell of St. *John* allowed in the parts of the Romish correspondence, wherein the first verses of that Divine Gospell are singled out, printed in a small roundell, and sold to the credulous ignorants, with this fond warrant, that whosoever carries it about him shall be free from the dangers of the dayes mis-happes: The booke and the key, the sive and the sheeres for the discovery of the Thiefe; The notching of a stick with the number of the warts which wee would have removed, the rubbing of them with raw flesh, to be buried in a dunghill that they may rot away insensibly therewith, or washing the part in moon-shine for that purpose: words, and characters, of no signification,

cation, or ordinary forme, for the curing of diseases in man, or beast, more than too many whereof we find in *Cornelius Agrippa*, and *Paracelsus*.

Formes of words and figures for the stanching of blood, for the pulling out of thornes, for easing paine, for remedying the biting of a mad dog.

Amulets made up of Reliques, with certaine letters and crosses, to make him that weares them invulnerable.

Whistling for a winde wherewith to winnow, as it is done in some ignorant parts of the west.

The use of an holed flint, hanged up on the rack, or beds head, for the prevention of the night-mare in man, or beast.

The judging by the letters of the names of men or women, of their fortunes, as they call them, accor-

ding to the serious fopperies of *Arcandam.*

The seventh Sonne's laying on of hands for the healing of diseases; The putting of a verse out of the *Psalmes* into the vessell to keep the wine from sowring; The repeating of a verse out of *Virgil* to preserve a man from drunkennesse all that day following, Images astronomically framed under certaine constellations to preserve from severall inconveniences, as under the signe of the Lion the figure of a Lion made in gold, against melancholick fancies, dropsie, plague, fevers: which *Lessius* might well marvell how *Cajetan* could offer to defend; when all the world knowes how little proportion and correspondence there is betwixt those imaginary signes in Heaven, and these reall creatures on Earth.

Judiciary Astrology, as it is commonly practised, whether for the casting

casting of nativities, prediction of voluntary, or civill events, or the discovery of things stolne or lost: for, as the naturall Astrology, when it keeps it selfe within its due bounds is lawfull, and commendable, (although not without much uncertainty of issue;) so that other Calculatory, or figure-casting Astrology is presumptuous and unwarrantable; cryed ever downe by Councells and Fathers, as unlawfull; as that which lies in the mid-way betwixt magick, and impostute, and partakes not a little of both.

The anointing of the weapon for the healing of the wound, though many miles distant; wherein how confident soever some intelligent men have beene) doubtlesse there can be nothing of nature, sith in all naturall agences, there must necessarily be a contraction either reall, or virtuall; here in such an intervall, none can

be

bee: neither can the efficacy bee ascribed to the salve; since some others have undertaken and done the cure, by a more homely and familiar ointment; It is the ill-bestowed faith of the agent that draws on the successe from the hand of an invisible Physitian.

Calming of tempests, and driving away devills by ringing of bells, hallowed for that purpose.

Remedy of witcheries, by heating of Irons, or applying of Crosses. I could cloy you with instances of this kinde, wherewith Satan beguiles the simple upon these two mis-grounded principles; 1. That in all experience they have found such effects following upon the use and practise of such meanes; which indeed cannot be denyed: Charms and Spels commonly are no lesse unfailing in their working, than the best naturall remedies; doubtlesse, the Devill is a most skilfull

full Artiſt: and can do feats beyond all mortall powers; but God bleſſe us from imploying him: 2 *King.* 1. 3. Is it not becauſe there is not a God in *Iſrael* that we goe to enquire of *Baal-Zebub* the God of *Ekron*?

2. That there may be hidden cauſes in nature for the producing of ſuch effects, which they know not; neither can give any reaſon of their operations, whereof yet we doe commonly make uſe, without any ſcruple; and why may not theſe be ranged under the ſame head? which they have uſed with no other but good meaning, without the leaſt intention of reference to any malignant powers; In anſwer whereto, I muſt tell them, that their beſt plea is ignorance, which may abate the ſinne, but not excuſe it: There are indeed, deep ſecrets in nature, whoſe bottome we cannot dive into, as thoſe wonders of the load-ſtone; a piece outwardly con-

contemptible, yet of such force as approacheth neare to a miracle: and many other strange sympathies and antipathies in severall creatures, in which ranke may be set the bleeding of the dead at the presence of the murtherer: and some acts done for the discovery of witchcraft both in this, and our neighbor kingdome. But withall, though there be secrets in nature which we know not how she works, yet we know there are works which are well knowne, that she cannot doe: how far her power can extend is not hard to determine: and those effects which are beyond this, (as in the forementioned particulars) we know whither to ascribe: Let it be therefore the care and wisdome of Christians to looke upon what grounds they goe: whiles they have God, and nature for their warrant, they may walke safely; but where these leave them, the way

leads

leades downe to the Chambers of death,

Case III.

Whether reserving my conscience to my self, I may be present at an Idolatrous devotion, or whether in the lawfull service of God I may communicate with wicked persons.

THe question is double: both of them of great importance; The former I must answer negatively, your presence is unlawfull upon a double ground; of sinne, and of scandall: of sin, if you partake in the Idolatry; of scandall, if you doe but seeme to partake: The scandall is three-fold; you confirm the offenders in their sin, you draw others by your example into sin, you grieve the spirits of those wiser Christians, that are the sad witnesses of your offence.

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The great Apostle of the Gentiles (1 *Cor.* 8. 4,5,6,7,8,9,10.) hath fully determined the question in a more favourable case: the heathen sacrifices were wont to be accompanied (in imitation of the Jewish, prescribed by God himselfe) with feastes; the owners of the feast civilly invite the Neighbours (though Christians) to the banquets; The Tables are spread in their Temples; The Christian guests, out of a neighbourly society, goe, sit, eate with them: S. *Paul* cries downe the practice, as utterly unlawfull: yet this was but in matter of meat; which sure was Gods, though sacrificed to an Idoll; how much more must it hold in rites and devices, meerely, either humane, or devilish?

I need not tell you of the Christian Souldiers in the Primitive Persecution, who when they found themselves by an ignorant mistaking drawne, un-

under a pretence of loyalty, into so much ceremony as might carry some semblance of an Idolatrous thurification, ranne about the City in an holy remorse, and proclaimes themselves to be Christians: Nor how little it excused *Marcellinus* Bishop of *Rome* from an heavy censure, that he could say he did but for company cast a few graines of incense into the fire. The charge of the Apostle (1 *Thes.* 5. 22.) is full, and peremptory, that we should abstaine from every appearance of evill.

It is a poore plea that you mention of the example of *Naaman*. Alas, an ignorant Pagan! whose body if it were washed from his leprosie, yet his soule must needes be still foule: 2 *Kings* 5. 17, 18, 19. yet even this man will thenceforth offer neither burnt-offering, nor sacrifice unto any other God, but unto the Lord, nor upon any ground but the Lords peculiar;

culiar; and will therefore lade two Mules with Israelitish earth; and is now a professed convert: Yea, but he will still bow in the Temple of *Rimmon*: But how will he bow? Civilly onely, not religiously, In the house of *Rimmon*, not to the Idoll; Not in relation to the false deity, but to the King his Master: you shall not take him going alone under that Idolatrous roofe, but according to his office, in attendance of his Soveraigne: nor bowing there, but to support the arme that lean'd upon him: And if upon his returne home from his journey he made that solemne protestation to his Syrians, which he before made to the Prophet: Take notice, O all ye Courtiers, and men of *Damascus*, that *Naaman* is now become a Proselyte of *Israell*, that hee will serve and adore none but the true God; and if you see him at any time kneeling in the Temple of your Idoll

Rimmon,

Rimmon, know that it is not done in any devotion to that false God, but in the performance of his duty and service to his royall Master; I see not but the Prophet might well bid him, *Goe in Peace*. How ever that ordinary and formall veledi&ction to a *Syrian*, can be no warrant for a Christians willing dissimulation.

It is fit for every honest man to seeme as he is; what do you howling amongst Wolves, if you be not one? Or what do you amongst the Cranes, if you be a Stork? It was the charge of *Jehu*, when he pretended that great sacrifice to *Baal*; Search, and looke that there be here with you none of the servants of the Lord, (2 *King*. 10. 23.) but the worshippers of *Baal* onely: surely had any of Gods Clients secretly shrouded himselfe amongst those Idolaters, his blood had beene upon his owne head: Briefly then, if you have a minde to keepe your selfe

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in a safe condition for your soule, let me lay upon you the charge which *Moses* enforced upon the congregation of *Israel* in the case of *Corah*'s insurrection, *Depart I pray you from the tents of these wicked men, and touch nothing of theirs, lest ye be consumed in all their sins.* Numb. 16,26.

The latter I must answer affirmatively: If the Ordinances be holy, why should you not take your part of them?

It is an unjust niceness to abridge your selfe of a blessing, for another mans unworthinesse: Doubtless, there ought to be a separation of the precious from the vile; the neglect whereof is the great sinne of those, whom in duty it concernes to perform it; but where this is not accordingly done, shall I suffer for anothers offence? my owne sinnes may justly keepe me off from Gods Table; if another mans may doe so too, I appropriate the

the guilt of his ſin to my own wrong: ſurely it argues but ſmall appetite to theſe heavenly viandes, if you can be put off with a pretence of others faults: Judge of the ſpirituall repaſt by this earthly; were you throughly hungry, would you refraine from your meat becauſe one of the gueſts hath a paire of foule hands? that may be a juſt eye-ſore to you, but no reaſon why you ſhould forbeare wholeſome diſhes: Carve you for your ſelfe, and looke to your owne trencher, he feedes for himſelfe, not for you; ſinne is the uncleanneſſe of the ſoule, that cleaves cloſer to it, than any outward naſtineſſe can to the skin; to feed thus ſoule then is doubtleſſe unwholeſome, to himſelfe, it can be no hurt to you. But you are ready to ſtraine the compariſon higher to your owne advantage: ſay, that one of the gueſts hath a plague-ſore running upon him, ſhall I then thinke it ſafe

safe to sit at the Table with him? now sin is of a pestilent nature, spreading its infection to others besides its owne subject; therefore it is meet we keepe aloofe from the danger of his contagion: True, there are sinnes of a contagious nature, apt to diffuse their venome to others, (as there are other some whose evill is intrinsecall to the owner,) but these infect by way of evill counsails, or examples, or familiar conversation, not by way of a meere extemporary presence of the person, by spreading of their corruption to those that are taken with them; not by scattering abroad any guilt to those that abhorr them. Well did our Saviour know how deadly an infection had seised on the soule of *Judas*, yet he drives him not from his board, lest his sinne should taint the Disciples.

The spirit that writes to the seven *Asian* Churches (*Rev.* 2. 20, 21, 22.) saw

saw and professed to see the horrible infection spread amongst the *Thyatirians* by the doctrine and wicked practises of their *Jesebell*, yet all that he enjoyns the godly party is to hold their own.

Have no fellowship, saith the Apostle, *with the unfruitfull works of darknesse*, (*Eph.* 5. 11.) Loe he would not have us partake in evill: he doth not forbid us to partake with an evil man in good works.

However therefore we are to wish and endeavour (in our places) that all the Congregation may be holy, and it is a comfortable thing to joyn with those, that are truly conscionable, and carefully observant of their wayes, in the immediate services of our God: yet where there is neglect in the overseers, and boldnesse in the intruders, and thereupon, Gods sacred Table is pestred with some unworthy Guests; it is not for you, upon this ground,

to

to deprive your selfe of the benefit of Gods blessed Ordinances; notwithstanding all this unpleasing encombrance you are welcome, and may be happy.

Case IV.

Whether vowes bee not out of season now under the Gospel, of what things they may be made; how farre they oblige us; and whether and how far they may be capable of release.

It is a wrongfull imputation that is cast upon us by the Roman Doctours, that we abandone all vowes under the Gospell: They well see that we allow and professe that common vow (as *Lessius* termes it) in Baptisme; which yet both *Bellarmine*, and he, with other of their consorts, deny to be properly such: It is true, that as infants make it by their proxies,

proxies, there may ſeeme ſome impropriety of the engagement as to their perſons; but if the party Chriſtened be of mature age, the expreſſe vow is made abſolutely by, and for himſelfe. Beſides this, we allow of the renovation of all thoſe holy vowes, (relating to the firſt) which may binde us to a more ſtrict obedience to our God, yet more, though we doe not now allow the vowes of things in their nature indifferent, to be parts of Gods worſhip, (as they were formerly under the law) yet we doe willingly approve of them, as good helps and furtherances to us, for the avoiding of ſuch ſinnes as we are obnoxious unto; and for the better forwarding of our holy obedience.

Thus, the charge is of eternall uſe, Pſal. 76. 11. *Vow unto God and performe it:* Not that we are bound to vow; that act is free and voluntary:

but that when we have vowed, we are ſtraitly bound to performance: It is with us for our vowes as it was with *Ananias* and *Saphira* for their ſubſtance. Whiles it remained (ſaith S. *Peter*) was it not thine own? (*Acts* 5.4.) Hee needed not to ſell it, he needed not to give it; but if he will give, he may not reſerve: If he profeſs to give all, it is death to ſave ſome; he lies to the holy Ghoſt, that defalks from that which he engaged himſelfe to beſtow.

It mainly concernes us therefore to looke carefully in the firſt place, to what we vow, and to our intentions in vowing, and to ſee that our vow be not raſh and unadviſed, of things either triviall, or unlawfull, or impoſſible, or out of our power to performe; for every Vow is a Promiſe made to God; and to promiſe unto that great and holy God, that which either we cannot, or ought not to doe, what

what is it other than to mock and abuſe that Sacred Majeſty, which will not hold him guiltleſſe that taketh his name in vaine? It is the charge to this purpoſe of wiſe *Solomon, Be not raſh with thy mouth, and let not thine heart be haſty to utter any thing before God, for God is in heaven, and thou upon earth, therefore let thy words be few*, Eccleſ. 5.2.

Your vow therefore muſt be either of things morally good, for the quickening you in that duty which you are bound to doe: or of things indifferent in themſelves, the refraining, or doing whereof, may tend either to the reſtraint from ſinne, or the furtherance of your holy obedience: As a man that findes his brains weak, and his inclination too ſtrong to pleaſing liquor, bindes himſelfe by a vow to drinke no wine ſave onely at Gods Table: or a man that findes himſelfe apt to be miſcarryed by his appetite,

confines himselfe by his vow to one dish, or to one meale for the day: or a man that findes himself given to the pleasure of gaming, to the losse of his time, and the weakning of his estate, curbes himselfe by his vow never to play for money: or a man that findes his prayers weak, and his flesh rebellious, vowes to tame his unruly desires, and to stir up his duller devotions by fasting.

And as the matter of your vow must be carefully regarded; so also your intentions in vowing; for if you vow to doe good to an ill end, your thanke is lost, and danger of judgement incurred: as if you vow to give almes for vaine-glory, or ostentation: or, if God shall prosper your usurious, or monopolizing project, you will build an hospitall; your vow is like to be so accepted, as the story tells us, the prayers were, of that bold *Curtizan*, who coming to the shrine of

of S. *Thomas* of * *Canterbury* (as that traitour was stiled) devoutly beg'd, that through the intercession of that Saint, she might be graced with so winning a beauty, that might allure her paramours to a gainfull courting of so pleasing a Mistresse, when suddainly (as my author tells me) she was stricken blinde: and certainely, so it might well be; for if a supposed Saint were invoked, it was God that was highly provoked by the sinfull petition of a shameleese harlot: and it was most just for him to revenge it; and so we may well expect it shall be with whosoever shall dare to make use of his sacred name to their owne wicked or unwarrantable purposes.

Since therefore our vowes must be for their matter (as Casuists well determine) *De meliore bono*, and for intentions, holy and directed onely to good; it plainly appeares that many

* Bromiard. sum. prædict.

idle purposes, promises, resolutions, are wont to passe with men for vows, which have no just claime to that holy title: One sayes he vowes never to be friends with such a one that hath highly abused him; another, that he will never come under the roofe of such an unkinde neighbour; one that he will drinke so many healths to his honoured friend; another that he will not give the wall or the way to any passenger: one that he will never weare suit but of such a colour; another that he will never cut his haire till such an event: These, and such like may be foolish, unjust, ridiculous selfe-engagements, but vowes they are not, neither therefore do bind the conscience, otherwise than as *Sampsons* cords, and withes, which he may break as a thred of tow, *Iudg.* 16.9.12.

But as for true vowes, certainly they are so binding, that you shall sin hainously

hainouſly in not performing them? It is not better than diſhoneſtly to fail in what we have promiſed to men; but to diſappoint God in our vowes, is no leſſe than ſacriledge: That of *Solomons* is weighty, Eccleſi: 5.4, 5, 6. *When thou vowſt a vow unto God, deferre not to pay it, for he hath no pleaſure in fooles; pay that which thou haſt vowed: Better it is that thou ſhouldſt not vow, than that thou ſhouldſt vow and not pay it: Suffer not thy mouth to cauſe thy fleſh to ſin, neither ſay before the Angel that it was an errour, wherefore ſhould God be angry at thy vow, and deſtroy the worke of thine hands?* If therefore a lawfull and juſt vow have paſſed your lips, you may not be falſe to God, and your ſelfe in not keeping it.

But if it ſhall ſo fall out, that there proves to be ſome maine inconvenience or impoſſibility in the fulfilling of this your ſolemne promiſe unto

God, whether through the extreme prejudice of your health, and life, or the over-swaying difficulty of the times what is to be done; surely as under the law (*Numb.* 30. 3, 4, 5.) it was left in the power of the parent to over-rule the vow of the childe, so I doubt not but under the Gospel, it is left in the power of your spirituall fathers, to order, or dispense with the performance of those vowes, which you would, but cannot well fulfill: neither was it spoken in vaine, nor in matter of sins onely, which our Saviour in way of authorization, said to his Apostles and their successours, *Whatsoever ye shall binde on earth, shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven. Mat.* 18.18 In this case therefore, I should advise you to make your addresse to your spirituall pastor, and freely to lay open your condition before him, and humbly to submit your

your selfe to his fatherly directions in that course, which shall be found best and safest for your soule: Think it not safe in a businesse of so high nature to relye upon your owne judgment; and to carve out your own satisfaction; but regard carefully what God hath said of old, *The priests lippes should keep knowledge: and they should seeke the law at his mouth: for he is the messenger of the Lord of hosts.* Mal. 2. 7.

Case V.

Whom may we justly hold an Heretick; and what is to be done in the case of Heresie?

THere is no one point wherein the Church of God hath suffered more, than in the mis-understanding of this question; How many thousand innocents, have in these latter

ages of the Church perished in this unhappy quarrell? yea, how many famous Churches have beene most unjustly thunder-struck with direfull censures of Excommunication down to the pit of hell, upon pretence of this crime, which have bin lesse guilty than their Anathematizers? And even amongst our selves, how apt we are to brand one another with this hatefull mark where there is no true merit of such a reproach?

It much imports us therefore to know who may be deservedly thus stigmatized by us: I have elsewhere somewhat largely insisted on this theme; whither I might spare some lines to referre you; But, in short, thus: To let passe the originall sense, and divers acceptions of the word, An heresie is no other than an obstinate errour against the foundation; All truths are precious, but some withall necessary; All errours are faulty,

faulty, but ſome damnable; the hainouſneſſe of the error is according to the worth of the truth impugned; There are Theologicall verities fit for us to know and believe; there are Articles of Chriſtian faith needfull to be known and believed; There are truths of meet and decent ſuperſtructure, without which the fabrick may ſtand; there are truths of the foundation ſo eſſentiall, as that without them it cannot ſtand: It is a maime to the houſe if but a tile be pulled off from the roofe, but if the foundation be razed, the building is overthrown: this is the endeavour and act of hereſie.

But now the next queſtion will be, what doctrines they are which muſt be accounted to be of the Foundation; Our countrey-man *Fiſher* the Jeſuite, and his Aſſociates wil tell you roundly, that all thoſe things, which are defined by the Church to be believed,

ved, are * fundamentall: A large ground-work of faith: Doubtleſſe the Church hath defined all things contained in the ſcripture, to be believed; and theirs (which they call Catholick) hath defined all thoſe Traditionall points, which they have added to the Creed, upon the ſame neceſſity of ſalvation to be believed; now if all theſe be the foundation, which is the building? what an imperfect fabrick doe they make of Chriſtian Religion; all foundation, no walls, no roofe? Surely it cannot, without too much abſurdity, be denied, that there is great difference of Truthes, ſome more important than others; which could not be, if all were alike fundamentall: If there were not ſome ſpeciall Truthes, the beliefe whereof makes, and diſtinguiſheth a Chriſtian, the Authors of the Creede Apoſtolick (beſides the

* Relac. of the third confer. p. 6.

other

other Symboles received anciently by the Church) were much deceived in their aime: He therefore that believes the holy Scriptures (which muſt be a principle preſuppoſed) to be inſpired by God; and as an abſtract of the chiefe particulars thereof, profeſſeth to believe and embrace the Articles of the Chriſtian faith, to regulate his life by the law of Gods commandements, and his devotion by the rule of Chriſt preſcribed; and laſtly to acknowledge and receive the Sacraments expreſly inſtituted by Chriſt; doubtleſſe this man is by profeſſion a Chriſtian, and cannot be denyed to hold the foundation; and whoſoever ſhall wilfully impugne any of theſe, comes within the verge of Hereſie: wilfully, I ſay, for meere error makes not an heretick; if out of ſimplicity, or groſſe ignorance, a man ſhall take upon him to maintaine a contradiction to a point of faith, being

ing ready to relent upon better light, he may not be thus branded: eviction and contumacy must improve his error to be hereticall. The Church of *Rome* therefore hath beene too cruelly-liberall of her censures this way, having bestow'd this livery upon many thousand Christians whom God hath owned for his Saints: and upon some Churches more Orthodoxe than her selfe, presuming upon a power (which was never granted her from heaven) to state new articles of faith, and to excommunicate and barre all that shall dare to gainsay her oracles: Whereas the great Doctor of the Gentiles hath told us from the spirit of God, that there is but *one Lord, one faith, one baptisme*; (Ephes. 4.5.) and what faith is that? S. *Jude* tells us: *Iude* 3. *The faith that was once delivered the Saints*; so that as well may they make more reiterations of Baptisme, and multiplicities

of

of Lords, as more faiths than one: ſome explications there may be of that one faith, made by the Church, upon occaſion of new-ſprung errours, but ſuch, as muſt have their grounds from fore-written truths, and ſuch, as may not extend to the condemnation of them whom God hath left free: new articles of faith they may not be, nor binde farther than God hath reached them.

Hereticks then they are, and onely they, that pertinaciouſly raze the foundation of the Chriſtian faith; what now muſt be done with them? ſurely, firſt, if they cannot be reclaimed, they muſt be avoided: It is the charge of the beloved Diſciple to the elect Lady, 2 *John* v. 10. *If any man come unto you and bring not* (that is, by an ordinary Hebraiſme, oppoſes) *this doctrine, receive him not into your houſes, neither bidde him God ſpeede.* But the Apoſtle of the Gentiles goes

yet

yet higher; for writing to *Titus* the great Super-intendent of *Crete*, his charge is, Tit. 3. 10. *A man that is an Heretick, after the first and second admonition reject.*

Now, when wee compare the charge with the person, we cannot but finde that this rejection, is not a meer negative act, of refraining company, but a positive act of censure, so as he, who had power to admonish, had also power to reject in an authoritative, or judicatory way: He sayes then, *Devita*, reject or avoid, not (as *Erasmus* too truly, but bitterly scoffes the Romish practise) *De vita tolle*: This of killing the heretick, as it was out of the power of a spirituall supervisor, so was it no lesse farre from the thoughts of him that desired to come in the spirit of meekness: Fagots were never ordained by the Apostle for arguments to confute Hereticks; this bloudy Logick and Di-

Divinity was of a much later brood, and is for a *Dominick*, not a *Paul* to owne: for certainely faith is of the same nature with love, it cannot be compelled, perswasions may move it, not force: These intellectuall sinnes must look for remedies of their owne kinde; But if either they be (as it is often) accompanied with damnable blasphemies, against God, whether in his essence, or attributes, or the three incomprehensible persons in the all-glorious Deity, or the blessed mediator betwixt God and man Jesus Christ, in either of his natures; or else, shall be attended with the publique disturbances and dangerous distempers of the Kingdome, or State wherein they are broached, the Apostle's wish is, but seasonable, in both a spiritual and a bodily sense; Gal. 5. 12. *Would to God those were cut off that trouble you*: In the mean time, for what concernes your selfe, if you know

know any such, as you love God, and your soules, keepe aloofe from them, as from the pestilence. * *Epiphanius* well compares heresie to the biting of a mad dog, which as it is deadly, (if not speedily remedied) so it is withall dangerously infectious, not the tooth onely, but the very foame of that envenomed beast carries death in it; you cannot be safe, if you avoid it not.

* Epiphan. hæres. l. 1.

Case VI.

Whether the lawes of men doe binde the Conscience, and how far we are tyed to their obedience.

BOth these extreames of opinion concerning this point, must needs bring much mischiefe upon Church and Kingdome: Those that absolutely hold such a power in humane lawes make themselves slaves to men: Those

Those that deny any binding power in them, run loose into all licentiousnesse: Know then that there is a vast difference betwixt these two; To bind the conscience in any act, and to bind a man in conscience to do or omit an act: Humane laws cannot do the first of them, the latter they may, and must doe: To binde the conscience is to make it guilty of a sin in doing an act forbidden, or omitting an act injoyned as in it selfe such: or making that act in it selfe an acceptable service to God, which is commanded by men: Thus humane lawes cannot bind the conscience: It is God onely, 1 *John* 3. 21. who, as he is greater than the Conscience, so hath power to binde or loose it: *Esay* 33. 22. It is he that is the onely Law-giver to the Conscience: *Jam.* 4. 12. Princes and Churches may make lawes for the outward man; but they can no more binde the heart, than they can make

make it. In vain is that power, which is not inabled with coertion, now what coertion can any humane power claim of the heart, which it can never attain to know? the spirit of man therefore is subject onely to the father of spirits, who onely sees and searches the secrets of it, and can both convince, and punish it.

Besides, well did penitent *David* know what he said, when he cryed out, *Against thee onely have I sinned*: Psal. 51. he knew that sinne is a transgression of the law, and that none but Gods law can make a sin: men may be concerned, and injured in our actions, but it is God who hath forbidden these wrongs to men, that is sinned against, in our acts of injustice and uncharitableness: and who only can inflict the spirituall (which is the highest) revenge upon offenders. The charge of the great Doctor of the *Gentiles* to his *Galatians*, was

Gal.

Galat. 5. 1. *Stand faſt in the liberty wherewith Chriſt hath made us free, and be not intangled againe in the yoak of bondage.* What yoak of bondage was this, but the law of Ceremonies? What liberty was this, but a freedome from the bondage of that law? And certainly if thoſe ordinances, which had God for their author, have ſo little power to bind the conſcience, as that the yoake of their bondage muſt be ſhaken off, as inconſiſtent with Chriſtian liberty; how much leſs is it to be indured, that we ſhould be the ſervants of men, in being tyed up to ſin by their preſumptuous impoſitions?

The lawes of men therefore doe not, ought not, cannot bind your conſcience, as of themſelves; but, if they be juſt, they binde you in conſcience to obedience: They are the words of the Apoſtle to his Romans, *Rom.* 13. 5. *Wherefore ye muſt needes be ſubject,*

ject; not onely for wrath, but also for conscience sake. However then their particular constitution in themselves put no speciall obligation upon us, under paine of sinne, and damnation; yet in a generall relation to that God, who hath commanded us to obey authority, their neglect or contempt involves us in a guilt of sin: All power is of God, that which the supreme authority therefore enjoyns you, God enjoyns you by it, the charge is mediately his, though passing through the hands of men.

How little is this regarded, in these loose times, by those lawlesse persons, whose practises acknowledge no soveraignty but titular, no obedience but arbitrary, to whom the strongest laws are as weapons to the *Leviathan, who esteemes Iron as straw, and Brass as rotten wood*, Job 41. 27.

Surely had they not first cast off their obedience to him that is high-

er

er than the higheſt, they could not without trembling heare that weighty charge of the great God of Heaven, Rom. 13. 1. *Let every ſoule be ſubject to the higher powers: For there is no power but of God, and the powers that be, are ordained of God:* 1 Pet. 2. 13. *Submit your ſelves to every Ordinance of man for the Lords ſake*; and therefore ſhould be convinced in themſelves, of that awe, and duty, which they ow to Soveraignty, and know and reſolve to obey God in men, and men for God.

You ſee then how requiſite it is, that you walk in a middle way betwixt that exceſſive power, which flattering Caſuiſts have beene wont to give to Popes, Emperours, Kings, and Princes in their ſeverall juriſdictions, and a lawleſſe neglect of lawfull authority: For the orthodox, wiſe, and juſt moderation whereof, theſe laſt ages are much indebted to the

the learned and judicious Chancellour of *Paris**, *John Gerson*, who first so checked that over-flowing errour of the power of humane usurpation (which carried the world before it) as gave a just hint to succeeding times, to draw that streame into the right channell, in so much as † *Dominicus à Soto* complaines greatly of him, as, in this, little differing from the *Lutheran* heresie: But in the way which they call heresie, we worship the God of our Fathers, *rendring unto Cesar the things that are Cesars, and unto God those things that are Gods*; yeilding our bodyes to *Cesar*, *Act.* 24.14. reserving our souls for God: tendring to just Lawes our active obedience, to unjust, passive.

But in the meane time, farre be it

* Tract. de Vit. spec. lect. 4. Cit. Dom. à Soto ut infra. † *Gersonis positio parum distat ab hæresi Lutherana.* Dominic. à Soto De Jure, &c. l. 1, qu. 6.

from

from us to draw this knot of our obligation harder, & cloſer then authority it ſelf intends it: What ever Popes may doe for their Decrees, certainly good Princes never meant to lay ſuch weight upon all their lawes as to make every breach of them (even in relation to the authority given them by God) to be ſinfull.

Their lawes are commonly ſhut up with a ſanction of the penalty impoſed upon the violation: There is an *obedientia burſalis*, (as, I remember, *Gerſon* calls it,) an obedience, if not of the perſon, yet of the purſe, which Princes are content to take up withall: we have a world of ſinnes (God knowes) upon us in our hourly tranſgreſſions of the royall lawes of our maker, but woe were us, if wee ſhould have ſo many ſins more, as we break ſtatutes: In penall lawes, where ſcandall or contempt finde no

place, humane authority is wont to rest satisfied with the mulct paid, when the duty is not performed.

Not that we may wilfully incur the breach of a good law, because our hands are upon our purse-strings ready to stake the forfeiture; This were utterly to frustrate the end of good lawes, which doe therfore impose a mulct that they may not be broken; and were highly injurious to soveraign authority, as if it sought for our money, not our obedience, and cared more for gain then good order; then which there cannot be a more base imputation cast upon government: As then we are wont to say in relation of our actions to the lawes of God; that som things are forbidden because they are sinfull, and some things are sinfull because they are forbidden, so it holds also in the lawes of men; som things are so bidden because they are justly offensive;

offensive; and som other things are only therfore offensive because they are forbidden, in the former of these we must yield our careful obedience out of respect even to the duty it self; in the latter, out of respect to the will of the law-giver, yet so, as that if our own important occasions shall enforce us to transgress a penall law, without any affront of authority or scandall to others, our submission to the penalty frees us from a sinfull disobedience.

Case VII.

Whether Tithes bee a lawfull maintenance for Ministers under the Gospel, and whether men bee bound to pay them accordingly.

AS the question of *Mine* and *Thine* hath ever imbroyled the world, so this particular concerning

tithes hath raised no little dust in the Church of God; whiles some plead them in the precise, (*quoad partes*) due & necessarie to be paid, both by the law of God, and nature it self; others decry them as a judaicall law, partly ceremoniall, partly judiciall, and therfore either now unlawfull, or at least neither obligatory, nor convenient.

What is fit to be determined in a businesse so over agitated, I shall shut up in these ten propositions.

1. The maintenance of the legall ministery allowed and appointed by God was exceeding large and liberall.

Besides all the tithes of corn, wine oyle, herbs, herds, flocks, they had forty eight cities set forth for them, with the fields round about them, to the extent of two thousand cubits every way: they had the first fruits of wine, oyle, wool, &c. in a large pro-

proportion; he was held to be a man of an evil eye that gave leſſe then the ſixtith part: They had the firſt born of cattle, ſheep, beeves, goats, and the price of the reſt, upon redemption: even the firſt-born of men muſt ranſom themſelves at five ſhekels a man; They had the oblations and vowes of things dedicated to God: They had the ample loaves (or *cakes rather) of ſhew-bread, and no ſmall ſhare in meat-offerings, ſin-offerings, treſpaſſe-offerings, heave-offerings, ſhake-offerings; of ſacrifices euchariſtical they had the breſt and ſhoulder; of other, the ſhoulder and the two cheekes; yea the very burnt offerings afforded them an hide: Beſides all theſe, all the males were to appeare before the Lord thrice a year; none were exempted (as their Doctors tell us) but ſer-

*Ten hand breadths long, five broad, ſeven fingers high.

vants, deaf, dumb, idiots, blind, lame, defiled, uncircumcised, old, sick, tender and weak, not able to travel, and no one of these which came up might appeare empty-handed.

What do I offer to particularize? there were no less then twenty four gifts alotted to the Priests, expresly in the law; the severals wherof who so desires to see, may finde in the learned and profitable Annotations of master *Ainsworth* *, out of *Maimonides*.

2. We can have no reason to imagine, that the same God who was so bountifull in his provisions for the legall ministery, should bear lesse respect to the Evangelicall; which is far more worthy and excellent then the other; justly therfore doth S. *Paul* argue from the maintenance of the one, a meet proportion for the fit sustentation of the other, 1 *Cor.* 9. 13.

* *H. Ainsworth* in *Lev.* 24 9. *ex Maimonide*

3. It

3. It is not fit for Gods ministers to be too intent to matter of profit; their main care must be the spiritual proficiency of the soules of their people; the secular thoughts of outward provisions must come in only on the by; but howsoever they may not be intangled in worldly affaires, yet they ought in duty to cast so much eye upon these earthly things as may free them from neglect; It is to *Timothy* that S. *Paul* writes, that if any man provide not for his own, & especialy for those of his own house he hath denied the faith, & is worse then an infidell. 1 *Tim.* 5. 8.

4. Under the law the tenth part was precisely alotted by the owner of all things, for the maintenance of the sacred Tribe; and if the wise and Holy God had not found that a meet proportion for those that served at his Altar; he had either pitched upon som other, or left it arbitrary; yea

even before the law, *Gen.* 14.20. *Abraham* (and in his loynes *Levi* himselfe) paid tithes to *Melchisedec* (*Heb.* 7.4.) the priest of the most high God; and whether it were by his example, or by some naturall instinct, we find the very heathen nations, after some great victory atchieved, were wont to devote stil the tithe of their spoiles to their Deities: so *Camillus*, when he had after a long siege taken the rich city *Vejos*, (a place of such importance, that upon the taking of it, he wished som great cross might befall *Rome* for the tempering of so high a felicity) he presently offereth the tithe to his * Gods: yea it was their custome who were most devout to consecrate the tithe of all their increase to those Gods they were most addicted unto; in so much as the *Romans* noted it in their *Lu-*

* Ὄρρα θεῷ δεκάτην, &c. Clem. Al Stro 1.

cullus,

cullus, that hee therfore grew up to so vast an estate, because he still devoted the tithe of his fruits to *Hercules*: And * *Pliny* tells us that when they gathered their Frankincense, none of it might be uttered till the Priest had the tithe of it set forth for him.

5. There can be no good reason given, why we may not observe the very same rate of proportion in laying out the maintenance of the ministery under the Gospell, and if these rules and examples bee not binding, (since Religion consisteth not now in numbers at all; yet there is no cause why Christian Kingdoms, or Commonwealths may not settle their choice upon the same number, and quantity with both Jewes and Gentiles.

6. The nationall lawes of this kingdom have set out the same pro-

* *Plin. l. 12. Bongus de num. Myster. num. 10*

portion of tenths for this purpose; If therfore there were no other obligation from the law of God or of the Church, nor any precedents from the practise of the rest of the world, yet in obedience to our municipall lawes, we are bound to lay forth the tenth part of our increase to the maintenance of Gods service; and that tenth is as truly due to the minister as the nine parts to the owner.

7. Since the tenth part is in the intention of the law both civill and ecclesiasticall, dedicated to the service of God, and in the meer intuition thereof, is alotted to Gods ministers, there can be no reason why it can be claimed, or warantably received by Lay persons, for their proper use & behoof; so as this practise of Impropriation, which was first set on foot by injust and sacrilegious Buls from *Rome*, is justly offensive both to God and good men; as mis-deriving the well-

well-meant devotions of charitable and pious ſoules into a wrong chan-nell. Nothing is more plaine then that tithes were given to the Church and in it, to God; how therefore that which is bequeath'd to God may be alienated to ſeculat hands, let the poſſeſſors look?

8. Let men be tied to make good the Apoſtles charge (ſince the legall rate diſpleaſes) and it ſhall well ſatisfie thoſe that wait upon Gods ſervices under the Goſpel; The charge of the Apoſtle of the Gentiles, is: *Let him that is taught in the word communicate to him that teacheth, in all good things*, Gal. 6. 6. whereto he adds, *ver. 7. Be not deceived, God is not mocked.* The charge is ſerious, and binding: and the required communication is univerſall; and that with a grave Item of Gods ſtrict obſervation of performance: we may not think to put it off with *Ambroſes* miſ-

pointed reading, of referring the *all good things* to the teaching, (a conceit sensibly weak, and misconstructive,) nothing is more evident then that it hath relation to the communicating; wherein (for ought I see) God intends a larger bounty to the Evangelicall ministery then to the legall; where all is to be communicated, what is excepted? All, not exclusive of the owner; but imparted by the owner; Let this bee really done, there will bee no reason to stand upon the Tenths.

9. But that this may be accordingly done, there is no law that requires a meer arbitrarinesse in the communicators: the duty of the teacher is punctually set downe, and so well known that the meanest of the people can check him with his neglect: and why should wee thinke the reciprocall duty of the hearer fit to bee left loose and voluntary: yet such an-

an apprehenſion hath taken up the hearts of too many Chriſtians as if the contributions to their miniſters were a matter of meer almes; which as they need not to give, ſo they are apt, upon eaſy diſpleaſures, to upbraid: But theſe men muſt be put in minde of the juſt word of our Saviour; *The laborer is worthy of his wages*: The miniſtery ſignifies a ſervice; a publique ſervice at Gods Altar; whereto the wages is no leſſe due, then the meat is to the mouth of him that payes it; No man may more freely ſpeak of tithes then my ſelfe, who receive none, nor ever ſhall do: Know then ye proud ignorants, that call your Miniſters your almes men, and your ſelves their Benefactors, that the ſame right you have to the whole, they have to a part; God and the ſame lawes that have feoffed you in your eſtates, have allotted them their due ſhares in them; which

which without wrong ye cannot detract. It is not your charity but your justice which they presse for their owne: Neither think to check them with the scornfull title of your servants; servants they are indeede, to Gods Church, not to you; and if they doe stoop to particular services for the good of your souls, this is no more disparagement to them, then it is to the blessed Angels of God, to be ministring spirits, *Heb.* 1. 14. sent forth to minister for them who shall be heires of salvation.

Shortly, it is the Apostles charge ratified in heaven, that they which labour in the word and doctrine should be remunerated with double honour; that is not formall of words and complements, but real of maintenance; which he laies weight upon his *Timothy* to enioyn, 1. *Tim.* 5 17.

10. And surely how necessary it is that we should bee at som certainty in

in this caſe, and not left to the meere arbitrary will of the givers, it too well apears in common experience, which tell us how ordinary it is, where miniſters depend upon voluntary benevolences, if they doe but upon ſom juſt reproofe gall the conſcience of a guilty hearer, or preach ſom truth which diſ-reliſhes the palat of a prepoſſeſſed auditor, how he ſtraight flies out; and not only withholds his own pay, but alſo withdrawes the contributions of others: ſo as the free-tongued teacher muſt either live by ayre, or be forced to change his paſture: It were eaſy to inſtance, but charity bids mee forbeare.

Hereupon it is, that theſe ſportulary preachers are faine to ſooth up their many maſters, and are ſo gagged with the feare of a ſtarving diſpleaſure, that they dare not be free in the reprehenſion of the daring ſins of

their

their uncertain benefactors as being charmed to speak either *placentia* or nothing. And if there were no such danger in a faithfull and just freedom, yet how easy is it to apprehend, that if even when the laws enforce men to pay their dues to their ministers, they yet continue so backward in their discharge of them: how much lesse hope can there be, that being left to their free choyce, they would prove eyther liberall or just in their voluntary contributions.

Howsoever therfore in that innocent infancy of the Church, wherein zealous Christians, out of a liberall ingenuity were ready to lay downe all their substance at the Apostles feet, & in the primitive times immediately subsequent, the willing forwardnes of devout people tooke away all need of raysing set maintenances for Gods ministers, yet now, in these depraved and hard hearted times

times of the Church, it is more then requisite, that fixed competencies of allowance should by good lawes be established upon them; which being done by way of tithes in those countries wherein they obtaine, there is just cause of thankfulnesse to God for so meet a provision, none for a just oppugnation.

Case VIII.

whether it bee lawfull for Christians where they find a country possessed by savage Pagans and Infidels, to drive out the native inhabitants; and to seize, and enjoy their lands, upon any pretence; and upon what grounds it may be lawfull so to doe.

WHat unjust and cruel measure hath been heretofore offered by the Spaniard to miserable Indians, in this kind, I had rather you should

should receive from the relation of their own Bishop, *Bartholomæus Casa* then from my Pen.

He can tell you a sad story of millions of those poor savages made away to make room for those their imperious successors; the discovery of whose unjust usurpation, procured but little thanks to their learned professors of *Complutum* and *Salamanca*: Your question relates to our owne case; since many thousands of our nation have transplanted themselves into those regions, which were prepossessed by barbarous owners: As for those countries which were not inhabited by any reasonable creatures, (as the *Bermudas*, or Summer-Islands; which were only peopled with Hogs and Deer, and such like bruite cattle) there can be no reason why they should not fall to the first occupant; but where the land hath a known master the case must vary:

For

For the deciſion whereof ſome grounds are fit to be laid.

No nation under heaven but hath ſom Religion or other, and worſhips a God ſuch as it is, although a creature much inferiour in very nature to themſelves; although the worſt of creatures, evil ſpirits; and that religion wherein they were bred, through an invincible ignorance of better, they eſteem good at leaſt.

Dominion and propriety is not founded in Religion, but in a naturall and civill right; It is true that the ſaints have in Chriſt, the Lord of all things, a ſpiritual right in all creatures; *all things are yours*, (ſaith the Apoſtle) *and you are Chriſts, and Chriſt is Gods*: but the ſpirituall right gives a man no title at all to any naturall or civill poſſeſſion here on earth; yea Chriſt himſelfe, though both as God, and as Mediator, the whole world were his, yet hee tells

Pilate

Pilate, My kingdom is not of this World; neither did he (though the Lord Paramount of this whol earth) by virtu of that transcendent soveraignty put any man out of the possession of one foot of ground which fell to him, either by birth, or purchase; Neither doth the want of that spirituall interest debar any man from a rightfull claim and fruition of these earthly inheritances.

The barbarous people were lords of their owne, and have their Sagamores; and orders, and formes of government under which they peaceably live, without the intermedling with other nations.

Infidelity cannot forfeit their inheritance to others; no more then enmity professed by Jewes to Christian Religion, can escheat their goods to the Crownes under which they live; yea much lesse: for those Jewes, living amongst Christian people

people, have, or might have had meanes ſufficient to reclaime them from their ſtubborn unbeleefe, but theſe ſavages have never had the leaſt overture of any ſaving helps towards their converſion: they therefore being as true owners of their native inheritances, as Chriſtians are of theirs, they can no more be forced from their poſſeſſions by Chriſtians, then Chriſtians may be ſo forced by them: certainly, in the ſame tearms wherein they ſtand to Chriſtians, do alſo in their judgement, Chriſtians ſtand to them; and if it would ſeem hard to us, that an inundation of Pagans ſhould (as hereto fore it hath done) break in upon us, and drive us out of our native poſſeſſions, how could it ſeem leſs unjuſt in us to them?

Their Idolatries, and ſins againſt nature are hainous and abhominable and ſuch as for which God of old

con-

condemned the seven nations to an utter extirpation; But what Commission have wee for their punishment? Could we shew such a patent in this case as the Israelites had for their warres against *Ameleck*, and those neighbouring heathens, all were sure: But you know who said, *What have I to do to judge them that are without?* 1 Cor. 5. 12. And if hee may not be a Judge, who may be an executioner.

Refusall of Christianity can be no sufficient ground of either invasion, or expulsion, fith violence is not the appointed way for plantation of the faith, which must be perswaded, and not compelled; that sentence therefore of Pope * *Gregory*; *Justum*

* Greg. cap. Peryenerabilem. & cap Si non. 23. q 4. *Justum sanctumque esse bellum quod infidelibus à Christianis infertur, ut eis imperio subditis prædicari possit Christi Evangelium, ne si imperio subditi non sint; prædicationi ex conversioni eorum qui crediderint impedimento esse possint.*

sanctumque

ſanctumque eſſe bellum, &c. (That it is a juſt and holy war which is by Chriſtians made againſt Infidels, that they being brought under ſubjection the Goſpel of Chriſt might be preached unto them; leſt that if they ſhould not be ſubjected, they might be an hindrance to preaching, and to the converſion of thoſe that would beleeve;) is ſurely either not out of the chayre, or beſide the cuſhion; and better beſeems a ſucceſſor of *Romulus*, then of *Peter*: I may not omit to acquaint you how hotly this main queſtion was diſputed by Spaniſh & Italian Divines upon the very firſt entrance of this litigious uſurpation; At which time Pope *Alexander* 6. (*Anno* 1493.) gave his large Decretory Bull to *Ferdinand* king, and *Iſabella* queen of *Caſtile* and *Aragon* for his expedition againſt the barbarous Indians of the then newly diſcovered world: *Geneſius Sepulveda*, a learned Spaniard

Spaniard writ then, in defence and incoragement of this holy invasion, a Dialogue, which hee called *Democrates secundus*, which was published at *Rome*, by the procurement of *Antonius Augustinus*, Auditor of the Palace; which no sooner came abroad, then it was eagerly set on, by the Divines both of *Italy* and *Spaine*; amongst these latter, the Doctors of *Salamanca*, adde the *Complutenses*; and above them *Antonius Ramirus* Bishoppe of *Segovia* falls foule upon that offensive discourse, which *Genesius* would faine have vindicated by an Apology, set forth to that purpose; but how insufficiently, it were easie to shew, if it were as needfull: But to make the matter good, hee thinks to back himselfe by the authority of great and famous persons, both counsellors, and Doctors, by him cited; and above all by

by that loud Bull of * *Alexander*; wherein yet, for ought I see, the charge which is laid on those Princes is only to reduce the people living in those Islands and countries to receive Christian Religion, which we may well apprehend more likely to be done by other means then by the sword.

After much agitation it pleased the King of *Spaine*, to require the judgement of † *Franciscus à Victoria*, the famous professor of Divinity at *Salamanca*, concerning this so weighty affaire; which he hath published with such wisdome and moderation, as so great a businesse required, stating the question aright on both sides; both shewing the insufficiency of the received grounds of that Indian expedition, and directing to those

* *Decret & indultum* Alex. 6. *super expeditione, &c. Populos in ejusmodi insulis & terris degentes ad Christianam Religionem indulcere velitis & debeatis, &c* † Franc. a Victoria Relect. de Indis.

juſt motives, & rules of proceedings herein, as might bee, in ſuch a caſe, juſtifiable, to which grave and ſolid diſcourſe of his, you may, if you pleaſe, bee referred for further ſatisfaction.

Onwards, I ſhall draw forth ſome few of ſuch conſiderations from him as may ſerve for my preſent purpoſe.

Firſt therefore it is lawfull for Chriſtians to travell into any countrey under heaven, and as ſtrangers, to ſtay there, without any wrong done to the natives; A thing allowed by the law of nations derived from the law of nature, by which law it is every where held an inhuman thing to offer ill meaſure to a ſtranger. It is the argument that righteous *Lot* uſed to the worſt of Pagans, the *Sodomits*, *Only unto theſe men doe nothing, for therefore are they come under the ſhadow of my roof.* Gen. 19. 8.

And

And if before the diviſion of nations, the earth lay freely open to all paſſengers without ſcruple, to travel whither they pleaſed, ſurely, that partition was never intended to warant a reſtraint. And if nature have made the Sea and all the in-lets of it common, it were very injurious to abridg any nation of the free uſe of ſo liberall an element.

Secondly, it is lawfull for us to uſe trafique with thoſe Infidels, and to interchange comodities with them, and to abide upon their coaſts for negotiation, and to fiſh in their ſea, and to take part of thoſe profits which nature hath made common to all comers. And if thoſe Pagans ſhall oppoſe us in ſo warrantable courſes, it will be meet for us to tender them al fair ſatisfaction; perſwading them that we intend no harm or prejudice to them in their perſons, or eſtate, but much good to both; labouring

to win them by all courteous demeanor; But if they shall flie out, notwithstanding all our kind indeavors, into a violent opposition of us; setting upon us in a hostile manner, offering to cut our throats in so unjust a quarell, it is lawfull for us to stand upon our defence, and to repell one force with another; and to use all convenient meanes for our security; and if we cannot otherwise be safe, to raise bulwarks or fortifications for our own indemnity; and if we finde our selves over-powred by implacable Savages, to call for the aid and assistance of our friends, and (if the enmity continue and proceed) of our Princes: since the just cause of war is the propulsation of publique injuries; and such injury is as great as barbarous.

But if not so much cruelty of disposition, as feare and suspicion of a strange nation shal arm them against

us; our care must bee so to manage our own defence, as may be least offensive to them; & therfore we may not take this occasion of killing their persons, or sacking their townes, or depopulating their countrys, for that in this case they are no other then innocent.

If after all gentle intreaties, courteous usages, and harmlesse self-defence, they shal persist in a malicious hostility, & can by no means be reclamed from their impetuous onsets; there is now just cause not to deale with them as innocents, but as enemies: and therfore to proceede against them accordingly.

But an higher and more warrantable title, that we may have to deale with these barbarous Infidels, is, for the propagation of Christian Religion; and the promulgation of the Gospel of *Jesus Christ* amongst these miserable savages. For which wee

have good ground from the charge of our Saviour: *Goe preach the Gospell to every creature*, *Mar. ult.* and he that was in bonds for the name of the Lord Jesus, tels us, *The word of God is not bound*, 2 Tim. 2. 9. not bound, either in fetters, or within limits: Oh that wee could approve to God, and our Consciences, that this is our main motive and principall drift in our western plantations; but how little appearance there is of this holy care and endeavour, the plaine dealer upon knowledge hath sufficiently informed us; Although I now heare of one industrious spirit that hath both learned the language of our new Islanders, and printed some part of the Scripture in it, and trained up some of their Children in the principles of Christianity: a service highly acceptable to God, and no lesse meritorious of men: The Gospell then may be, must be preached

to

to those heathens, (otherwise they shall perpetually remaine out of the estate of salvation) and all possible meanes must be used for their conversion; but herein I must have leave to depart from *Victoria*, that he holds it lawfull if the savages do not freely permit (but goe about to hinder) the preaching of the Gospell, to rayse war against them; as if he would have them cudgeled into Christianity: surely this is not the way: It is for Mahumetans to profess planting religion by the sword; it is not for Christians; It is a just clause therfore that he puts in, that the slaughters hereupon raised may rather prove an hindrance to the conversion of the savages, as indeed it fell out; the poor Indians being by these bloody courses brought into such a detestation of their masters, the Castilians, that they profest they would not goe to heaven if any Spanyards were there.

The way then to plant the Gospel of Christ successfully among those barbarous soules, must be only gentle, and plausible: first, by insinuating our selves into them by a discreet familiarity, and winning deportment, by an holy and inoffensive living with them; by working upon them with the notable examples of impartiall justice, strict piety, tender mercy, compassion, chastity, temperance & all other Christian virtues; and when they are thus won to a liking of our persons and carriage, they will be then wel capable of our holy counsels; Then will the Christian faith begin to relish with them; and they shall now grow ambitious of that happy condition, which they admire in us: then shall they be glad to take us into their bosoms: and think themselves blessed in our society and cohabitation: Lo this is the true way of Christian conquests; wherein

wherein I know not whether shal be the greater gainer, the victor or the conquered; each of them shall blesse other, and both shall be blessed by the Almighty.

Case IX.

Whether I need in case of some foule sin, committed by mee, to have recourse to Gods Minister for absolution; and what effect I may expect therefrom.

A Meane would do well betwixt two extremes; the careless neglect of our spirituall fathers on the one side, and too confident reliance upon their power, on the other: some there are that doe so over-trust their leaders eyes, that they care not to see with their own; others dare so trust their own judgement, that they think they may sleight their spiritual

guides: there can be no safety for the soul, but in a mid-way betwixt both these.

At whose girdle the keyes of the kingdom of heaven doe hang, mee thinks wee should not need dispute, when we hear our Saviour so expresly deliver them to *Peter*, in the name of the rest of his fellowes, and afterwards to all his Apostles, and their lawfull successors in the dispensation of the doctrine and discipline of his Church: In the dispensation of doctrine to all his faithfull Ministers under the Gospell; In the dispensation of discipline to those that are entrusted with the mannaging of Church-government; with these latter we meddle not; neither need we, if we had occasion; after the so learned & elaborate discourse of the power of the Keyes, set forth by judicious Doctor *Hammond*, to which I suppose nothing can be added. The former

former is that which lies before us: Doubtleſſe, every true miniſter of Chriſt, hath by virtue of his firſt and everlaſting commiſſion, two keyes delivered in his hand; the key of knowledg, and the key of ſpirituall power: the one, whereby he is enabled to enter and ſearch into, not only the revealed myſteries of ſalvation, but alſo, in ſome ſort, into the heart of the penitent; there diſcovering (upon an ingenious revelation of the offender) both the nature, quality, and degree of the ſinne; and the truth, validity, and meaſure of his repentance: The other whereby he may in ſome ſort either lock up the ſoul under ſin, or free it from ſinne; theſe keyes were never given him, but with an intention that he ſhould make uſe of them upon juſt occaſion. The uſe that hee may and muſt make of them is both generall, and ſpeciall: Generall, in publiſhing the will

will and pleasure of God signified in his word, concerning sinners; pronouncing forgivenesse of sins to the humble penitent, and denouncing judgement to the unbeleeving, and obdured sinner: In which regard, he is as the Herald of the Almighty, proclaming war and just indignation to the obstinate; and tendring terms of pardon and peace to the relenting and contrite soule: or rather, as the Apostle stiles him, 2 *Cor.* 5. 20. Gods Ambassador offering and suing for the reconciliation of men to God; and if that be refused, menacing just vengeance to sinners.

Speciall, in a particular application of this knowledge and power to the soul of that sinner which makes his addresse unto him: Wherein must be inquired both what necessity there is of this recourse, and what aid and comfort it may bring to the soul.

Two

Two caſes there are wherein certainly there is a neceſſity of applying our ſelves to the judgement of our ſpirituall guides; The firſt is in our doubt of the nature and quality of the fact; whether it be a ſin, or no ſinne; for both many ſinnes are ſo gilded over with fair pretences and colourable circumſtances, that they are not to be de cryed but by judicious eyes; and ſome actions which are of themſelves indifferent, may by a ſcrupulous conſcience be miſtaken for hainous offences: Whither ſhould we goe in theſe doubts but to our Counſaile learned in the Lawes of God; of whom God himſelf hath ſaid by his *Prophet*. *The Prieſts lips ſhould keep knowledge, and they ſhould ſeeke the Law at his mouth; for he is the meſſenger of the Lord of Hoſts*. Mal. 2. 7.

The ſecond is in the irreſoluble condition of our ſouls after a known

ſin

sin committed; wherein the burdened conscience not being able to give ease unto it self, seeks for aid to the sacred hand of Gods Penetentiary here on earth, & there may find it; That is, that which *Elihu*, as upon experience, suggesteth unto *Job*, on his dunghill: *Job* 33.22. *The soul of the remorsed draweth near to the grave, and his life to the destroyers:* ver. 23. *But if there bee a messenger* (of God) *with him, an interpreter, one of a thousand, to shew unto man his uprightnesse*, (and the soundnesse of his repentance) ver. 24. *then is* (God) *Gratious unto him, and saith, Deliver him from going down into the pit; I have found a ransome, &c.* ver. 26. *Hee shall pray unto God; and he will be favorable unto him; and hee shall see his face with joy.* In case of some dangerous sickenesse of the body, wee trust not our owne skill, nor some ignorant quack-salvers, but seek to a learned

and

and experienced Physitian for the prescription of some sure remedies; whereas, if it be but for a sore finger, or a tooth-ach, we care only to make use of our own receits? And so in civil quarels, if it be only som sleight brabble, wee thinke to compote it alone; but if it be som maine question importing our free hold, wee are glad to waite on the staires of some judicious Lawyer, and to fee him for advice: How much more is it thus in the perilous condition of our soules? which as it is a part farre more precious then its earthly Tabernacle, so the diseases whereto it is subject, are infinitely more dangerous and deadly.

Is your heart therfore embroyled within you, with the guilt of some hainous sin? labour what you may to make your peace with Heaven; humble your self unto the dust before the Majesty whom you have offended;

fended; beat your guilty breſt, water your cheeks with your tears; & cry mightily to the father of mercies for a gracious remiſſion; but if after all theſe penitent endevours you finde your ſoule ſtill unquiet; and not ſufficiently apprehenſive of a free and full forgiveneſs; betake your ſelfe to Gods faithfull agent for peace; run to your ghoſtly Phyſitian, lay your boſome open before him; flatter not your own condition; let neither feare nor ſhame ſtay his hand from probing and ſearching the wound to the bottome; and that being done, make carefull uſe of ſuch ſpirituall applications as ſhall be by him adminiſtred to you: This, this is the way to a perfect recovery, and fulneſs of comfort.

But you eaſily grant that there may be very wholſome uſe of the ghoſtly counſell of your Miniſter in the caſe of a troubled ſoule; but you doubt

doubt of the validity and power of his absolution, concerning which it was a just question of the Scribes in the Gospell; *Who can forgive sinnes but God only?* Mar. 2. 6. Our Saviour therefore to prove that he had this power, argues it from his divine omnipotence; *He only hath authority to forgive sinnes,* (ver. 7.) that can say to the decrepit paralytick; *Arise, take up thy bed and walke*; (ver. 9.) none but a God can by his command effect this; he is therefore the true God that may absolutely say, *Thy sins be forgiven thee,* (ver. 10.) Indeede, how can it be otherwise? Against God only is our sin committed, against man only in the relation that man hath to God; He only can know the depth of the malignity of sin, who only knowes the soule wherein it is forged; He only who is Lord of the Soule, the God of spirits, can punish the Soule for sinning;

ning; Hee only that is infinite can doome the sinfull soule to infinite torments; He only therefore it must be, that can release the guilty Soule from sin and punishment. If therefore man, or Angell shall challenge to himselfe this absolute power to forgive sin let him be accursed,

Yet withall it must be yeelded, that the blessed son of God spake not those words of his last commission in vaine; *Whose soever sins ye remit, they are remitted unto them; and whose soever sinnes ye retaine, they are retained.* John 20.23. neither were they spoken to the then present Apostles only, but in them to all their faithfull successors to the end of the world.

It cannot therfore but be granted, that there is some kind of power left in the hand of Christs ministers, both to remit and retain sin: Neither is this power given only to the Governors

Governors of the Church, in reſpect of the cenſures to be inflicted or relaxed by them, but to all Gods faithfull miniſters, in relation to the ſins of men: A power not ſoveraign and abſolute, but limited & miniſteriall, for either quieting the conſcience of the penitent, or further aggravating the conſcience of ſin and terror of judgement to the obſtinate and rebellious. Neither is this only by way of a bare verball declaration, (which might proceed from any other lips) but in the way of an operative and effectuall application, by virtue of that delegate, or commiſſionary authority which is by Chriſt entruſted with them. For certainly, our Saviour meant in theſe words to conferre ſomwhat upon his Miniſters, more then the reſt of the world ſhould be capable to receive, or perform. The abſolution therefore of an authorized perſon muſt needs be

of

of greater force and efficacy then of any private man, how learned or holy soever, since it is grounded upon the institution and commission of the Sonne of God, from which all power and virtue is derived to all his ordinances: and we may wel say, that whatsoever is in this case, done by Gods minister (the key not erring) is ratified in heaven: It cannot therfore but be a great comfort, and cordiall assurance to the penitent soule to heare the messenger of God (after a careful inquisition into his spiritual estate and true sight of his repentance) in the name of the Lord Jesus pronouncing to him the full remission of all his sinnes.

And if either the blessing or curse of a father goe deeper with us, then of any other whosoever; although but proceeding from his own privat affection, without any warrant from above; how forcible shall we esteem the

the(not so much apprecatory, as declaratory)benedictions, of our spirituall Fathers, sent to us, out of Heaven?

Although therefore you may perhaps, through Gods goodnesse, attaine to such a measure of knowledg and resolution, as to be able to give your self satisfaction concerning the state of your soul; yet it cannot be amisse, out of an abundant caution to take Gods minister along with you, and making him of your spirituall Counsaile, to unbosome your selfe to him freely, for his fatherly advice and concurrence: The neglect whereof, through a kinde of eyther strangenesse or mis-conceit, is certainly not a little disadvantageous to the soules of many good Christians. The Romish Laity makes either Oracles or Idols of their Ghostly Fathers; if we make Cyphers of ours, I know not whether we be more injurious

tious to them, or our selves. We go not about to rack your consciences to a forced and exquisite confession, under the pain of a no-remission, but wee perswade you for your owne good, to be more intimate with, and less reserved from, those, whom God hath set over you for your direction, comfort, salvation.

CASE X.

Whither is bee lawfull for a man that is not a professed Divine, that is (as we for distinction are wont to call him) for a laick person, to take upon him to interpret the Scripture.

MAny distinct considerations had neede to make way to the answere.

First, it is one thing for a man to interpret Scripture, another thing to take upon him the function of preach-

preaching the Goſpell, which was perhaps in your intention; this is far more large then the other; every mã that preacheth interpreteth the Scripture, but every one that interprets Scripture doth not preach. To interpret Scripture is only to give the ſenſe of a Text; but to Preach is to divide the Word aright; to apply it to the Conſcience of the hearer; and in an authoritative way to reprove ſin, and denounce judgement againſt ſinners; to lay forth the ſweete promiſes of the Goſpell to the faithfull and penitent; for the performing whereof there muſt be a commiſſion to Gods miniſter from him that ſends him; upon which the Apoſtle hath pronounced a (Τις ἱκανὸς) *Who is ſufficient for theſe things?*

Secondly, it muſt bee conſidered in what nature, & within what compaſs the interpretation is; for doubtleſſe the juſt degrees of callings muſt

be

be herein duly observed; whether in a publique way, as Pastors of congregations; or in a private way, as masters of families; whether in the schooles, in a meere Grammaticall way; or in the Church, in a predicatory.

Thirdly, it must be considered, as what the calling, so what the gifts are of the interpreter: for surely, meere interpretation doth not depend upon the profession, but upon the faculty of the undertaker; whether he be learned, or ignorant; whether skilfull in languages and arts (which certainly must be required in whosoever would put forth his hand to so holy and great a work, or whether inexpert in both: where these gifts of interpretation, and eminent endowments of learning are found, there can be no reason of restraining them from an exercise so beneficially edificatory to the Church of God: without

without which the truth of Christian religion had wanted much both of her vigour, and lustre in all generations. How famously is it known that *origen* before his entring into holy Orders, even at eighteene yeeres of his age entred into that great worke of his Catechisings: *Act.* 18.24.25. *Apolles* the Alexandrian was an *eloquent man, and mighty in scriptures, and taught diligently the things of the Lord; yet knew nothing but the Baptisme of* John, *till* Aquila *and* Priscilla took him to task, and *more perfectly expounded to him the way of God*; and what happy use it pleased God to make of laick hands, for both the defence and propagation of the Gospell, we need no other witnesse then S. *Ierome*, who hath memoriz'd amongst the primitive Christians, *Aristides*, *Agrippa*, *Hegesippus*, *Justine*, *Musanus*, *Modestinus*, both the *Apollonii*, *Heraclius*, *Maximus*, and

many others, whom God raised up amongst the learned laity of those times, to Apologize for Christianity; And in the last foregoing age, how scarce removed out of our sight, are *Laurentius Valla*, both the Earles of *Mirandula*, *Capnio*, *Fagius*, *Erasmus*, *Faber*, and the rest of those famous way-makers to the succeeding restitution of the evangelicall truth: And what a treasure in this kind had the Church of God lost, if it should have missed the learned annotations upon the Scripture, derived to us from the hands of *Mercerus*, *Joseph Scaliger*, *Drusius*, both *Causaubons*, *Tilenus*, *Grotius*, *Heinsius*, *Selden*, and such other expert philogists, never initiated into sacred Orders?

Fourthly, due and serious consideration must be had of the interpretation it selfe; that it bee genuine and orthodox: for there can be nothing in the world more dangerous then to mis-

miſ-conſtrue God ſpeaking to us in his Word; and to affixe upon his Divine Oracles a ſenſe of our owne, quite diſſonant from the intention of that ſpirit of Truth: Care therfore muſt be taken that the intepretation given, be every way conform to the Analogy of faith, and fully accordant to other Scripture; the neglect wherof, through either ignorance or miſpriſion hath bred many foul and perilous ſolœciſmes in Divinity; To give you a taſte of too full a diſh: In the 18. of *Eccleſiaſticus**, where the vulgar reades, *Hee that lives for ever created all things at once*: ſome, and thoſe no mean ones, of the Ancient, followed alſo by latter interpreters, have been miſled into an ungrounded conceit of an inſtantany & entire creation of the world, and all the parts thereof, in the firſt moment of time; whereas the Scripture hath

* *Eccleſ.* 18.1. ὁ ζῶν τὰ πάντα κτισθῆ

expresly and punctually set down the several six dayes, wherein each part of it was distinctly formed: which those misconstruers are fain to understand of the distinct notifications given to the Angels, concerning this almighty work: and what curious subtleties have beene hereupon raised by our school-Divines, * is more fit to be past over with an unpleasing smile, then to be seriously recounted; whereas the intention of the place, is only to signify that God made all things in the nniversall world, that have any being; intimating not the time of creation, but (as our † Version hath it) the generality of things created.

What advantage the blasphemous Arrians have formerly taken from the mis-interpretation of *Proverbs* 6. 22. where Wisdom is brought in

* *κοινῇ. communiter.* Montan.
† *Estii Annotat. in locum.*

(by

(by the miſtaking of ſom ancients) to ſay,* *The Lord created me* (in ſtead of *poſſeſſed me*) *in the beginning of his way, before his works of old*, is more worthy of indignation, then any farther proſecution. But moſt pregnant and notable is the groſſe miſ-priſion of a late famous ſchool-man, *Franciſcus d' Arriba*, Confeſſor to the late Queen Mother of *France*, who to maintain that new way of reconciling that ſcholaſticall difference among the Roman doctors, concerning the effectual aid of Divine Grace, depending or not depending upon free will (about which he had 60 daies diſputation with Cardinall *Aſcoly* & Cardinall *Bellarmine*, ſhewing how it might well be maintained without the deviſes of phyſicall predeterminations, or that *ſcientia media* of our late Jeſuites) relies chiefly for his opinion upon that Text of *Eſay*

* Prov. 8 22 קנני. † Vulg. Tra. Eſa. 45.11.

45.11. *Hæc dicit Dominus sanctus Israelis qui fecit ventura*, *Thus saith the Lord the holy one of Israel who hath made things to come*; following a misedition of the Vulgar which perverts the sense, by making a wrong stop in the sentence, whereas their owne *Montanus*, & any other that hath but seen the hebrew Text, would read it; *Hæc dicit Dominus sanctus Israelis qui fecit eum; Ventura interrogate me: Thus saith the Lord the holy one of Israel, and his maker: Ask me of things to come concerning my sonnes, &c.* referring the *ventura*, (*things to come*) to the following interrogate. So *Peña* the late extravagant Doctor of *Spain* in the maintenance of his novel opinions against Fathers and Councels, pressed against him, stands upon his defence, out of the Synod of *Constantinople*, *Act.* 5, grounded upon * the

* *Eccles.* 25.9. Blessed is he that preaches a word unheard of.

words

words of miscalled *Solomon*; *Beatus qui praedicat verbum inauditum*, corrupting both the Text & the Councell; whereas it should be read, *verbum inauditum obedientiæ*: and the Councell hath it aright, (εἰς ἀκοὴν ὑπακοῆς:) as ours turns it likewise, *well is he that speaketh in the eares of them that will heare*: It were easie to fill a just volume with instances of this kind.

To this purpose it will be requisite to make use of all those helps that may enable an interpreter to understand the Scriptures; whether those that are internall in it self; or externall from other supplies: of the former kind are a diligent sifting of the context and inference, and a carefull comparing and conferring of one Scripture with another, for all truths agree with themselves; & this word of God is the Sun that gives us light to see it self Externall; where it will

be needefull to call both for the aid of arts and tongues; and for the testimonies and judgements of reverend antiquity, and the not-to-be-neglected authority of modern Doctors; and thirdly, a due regard of those golden rules of Interpreting; which are recommended to posteeity by the learned Penns of *Clemens* of *Alexandria*, *Hierome*, *Augustine*, *Gerson*, *Hyperius*, *Illyricus*, *Jacobus Matthias*, and others; which, as meet for a volume apart, may not expect to finde a roome in so concise a Tractate.

The want and neglect of all which requisites what strange work it must needs make with the simple and unlettered, wee may well conceive, when great Clerks have hereupon bewrayed so foul and palpable miscarriage.

Albinus, the learned master of *Charles* the great, writing upon *John* finding

finding it ſaid of *Judas* that having received the Sop, hee went immediatly out; *Et erat nox*; and it was night; puts both together, as ſpoken of *Judas*; He (ſaith hee) was the night that went out; as Chriſt is the day that gives knowledge to his diſciples, that were day too; ſo *Judas*, the night, gives knowledge to the Jewes that were night, of a traitrous wickedneſs, &c.

What work † *Bernard* (who ſhewed in this, that he ſaw not all things) makes of *Dæmonium meridianum*, the noone-day-Devill, in one of his Sermons, is evident to be ſeene; yet had he been as well ſeen in language as he was fervent in his devotion; hee had ſpared that diſcourſe as raiſed from a meere ungrounded interpretation; there being no Devill in the text; but a phantaſme of his deluded imagination: And if I ſhould ſet

* *Erat autem ipſe nox.* † Pſal. 91. 8. Bern. Ser. 3.

forth the descents that our Postillers run upon the names of *Jobs* three daughters, I should seeme to you as apt to sport in so serious a subject; and if I could thinke it worth the labour of gathering up the wilde senses, far-fetcht Allegories, absurd inferences, that ignorant Friers have fastned upon Scripture, it is not a small skin that would containe that Tome.

Surely that man whosoever he be, that would be hoising saile in these deeps of scripture, had neede to bee well ballast, and well tackled, and skilfull in the Compasse, else he will have much adoe to escape a wrack: He that will walk in paths of danger had need to have his eys about him; an hoodwinkt man may easily bee carried against a post: and hee that hath not light enough to see his own way, had need to take heed whom he trusts: Hee that would blind-fold

follow

follow those very interpretations which the Church of *Rome* hath commended for authenticall, would run into foul and dangerous absurdities: let me single out som few confessed by their owne *Estius*, and *Lucas Brugensis*; such as are plainly contradictions to Scripture, and doe, as it were, give the lye to Gods spirit. Such is that 2 *Sam.*8.18. *Filii autem* David *sacerdotes erant*; *The sonnes of* David *were Priests*: whereas every child knowes that the Scripture frequently tells us none could be priests but of *Aarons* order and tribe, out of *Levies* loins; and that *David* was of the house of *Judah*: the *Septuagint* rightly turns it δυναστευε*. Againe who that shall finde it in the Vulgar interpretation: *David desperabat &c. David despaired* that he could escap-

* The word in the originall is כֹּהֲנִים which every man knowes to bee used ordinarily to signifie either *Principes*, or *Sacerdotes*, as Exo. 2. 16.

from

from the face of *Saul*: would not inferre that he utterly distrusted Gods assurance, by the prophet, of his future Kingdom; whereas the originall is by *Festinus* his own confession, *Festinabat*, as we also turn it, *David made haste to get away, &c.* 1 Sam. 23. 26. He that should find it reported of one of the sonnes of *Er*, *qui stare fecit solem* (hee that made the Sun to stand still) would justly wonder what kind of man this was, that had been so long obscured from the world, & yet should have don so strange a miracle as never was don but by *Joshua* (1 *Chron.* 4. 22.) whereas hee that lookes into the text, shall finde no mention at all of the Sun, but only of the meer proper name of *Jechin* the son of *Er*.

He that shall read in *Job*, where God speakes of the *Leviathan*; *Cum sublatus fuerit* (i. *Leviathan*) *timebunt Angeli & territi purgabuntur*; when

when he raiſeth up himſelfe, the Angels ſhall feare, and being terrified ſhall bee purged; Job. 41. 25, would ſure think this Whale were the Devill, (as ſom ancients have miſtaken him) and may well wonder how the good Angels being celeſtiall ſpirits) could be capable of fear; or how the evill Angels could be capable of purging: when the text hath no mention nor thought of * Angels; but only ſignifying the ſtrength and terriblenesſe of the Whale, expreſſes it in theſe words; *When he raiſeth up himſelf the mighty are afraid; by reaſon of breakings they purifie themſelves.* *Solomon* was faulty enough in his Idolatry, but he that ſhall read 1 *Kings* 11. 5. (in the Vulgar interpretation) that hee went after *Chamoſh* the God of the *Moabites*, ſhall adde one Idoll

* Where doubtleſſe אילים was miſtaken for אלהים. which title is ſometimes given to the Angels. 1 King. 11. 5.

more

more to him then we find him guilty of; *Solomon* was in his holy and regular times; 1 *King.* 4. 32. full of heavenly meditations and divine ditties; but hee that should follow the Vulgar interpretation, would fasten upon him almost * four thousand more then ever he owned.

After that *Merab Sauls* eldest daughter was given away to *Adriel* the *Meholathite*, 1 *Sam.* 18. 20. contrary to engagement, hee that will follow the Vulgar, must say that *David* straight fell in love with *Michal*, the other sister; whereas the text tells us that *Michal* fel in love with him.

He that should find in the Vulgar construction, that *Saul* sung all the day naked before *Samuel* in *Naioth*, would think his new Prophesying had put him into a merry vein, 1 *Sam* 19. 24. whereas the text only tells us

* *Quinque milia*, for *mille & quinque*, five thousand, for a thousand and five. † *Cecinit* for *cicidit*.

that

that hee fell down stripped of his wonted clothes.

He that should find in the Vulgar, *Psal.* 71. 5. *David* reporting of himself [*non novi literaturam*] *I know no learning*, would wonder at the Prophets disparagement of his skill, who had elsewhere professed himself wiser then his teachers; whereas all that he sayes, is *that the mercies & blessings of God upon him have been so many, that he knows not the numbers thereof.

He that should find the 7 Angels in the Revelation *Vestitos lapide*; *cloathed with stone* † *Rev.* 15. 6. would sure think them buried; wheras the Text is, *clothed in pure white linnen*.

And what do you imagine would a plain reader think of that charge of the wise man; *Noli velle mentiri*

* The word is ספרות *numeros*. † Rev. 15. 6. λάϊον ἔσσο χιτῶνα *Suid.* ἐνδεδυμένοι λίνον Rev. 15. 6.

omne

omne mendacium; *Bee not willing to lie all manner of lies*, *Ecclus.*7. would hee not ſtraight ſay: ſom belike I am allowed to lye? whereas the words are peremptory even in *Eſtius* his reading, according to ours; *Uſe not to make any manner of lyes.*

Yea that very correction of the Vulgar interpretation which *Brugenſis* allowes and magnifies, 1 *Cor.*15. 51. with what ſafety can it paſſe the judicious; whiles he reades, *omnes quidem reſurgemus, ſed non omnes immutabimur*; *Wee ſhall all riſe again, but we ſhall not all be changed*: For how can thoſe riſe again that never died? how are thoſe capable of a reſurrection, which are only changed? Whereas the juſt ſenſe runnes according to our * Verſion, *We ſhall not all ſleep, but we ſhall all bee changed.* For thoſe that are found alive at our Saviours ſecond cõming ſhall not ſleep

* ἀ pro οὐ

in

in death; yet both they and the formerly dead muſt undergoe a change.

I could utterly weary you with inſtances; How muſt he that reades the Apocryphall *Eccleſiaſticus*, needs ſay that this man (how obſcure ſoever in his authority) ſaw more and cleerer then all the acknowledged Prophets of the old Teſtament; for hee hath foretold us expreſly the very name of our Lord Jeſus which none of them ever beforehand publiſhed: For hee (*Eccluſ.*43.23.) ſpeaking of the deep Sea, is read in the Vulgar to ſay, *Plantavit illum dominus Jeſus*; *The Lord Jeſus planted it.* I ſhame to think what ſport a Jew will make of ſuch a groſſe miſtaking; wherein *mous* (Jeſus, is miſ-read for) *mous* Iſlands, ſo as the right ſenſe is only this; *God by his Counſell appeaſeth the Deepe, and planteth Iſlands therein*; But I forbeare, only if you have too much leiſure, you

you may be pleased to cast your eye upon the Margine.

Neh. 6.2. *Percutiamus simul in vitulis, in campo unus*; for, *in viculis, in campo, Ono. Anni nostri sicut aranea meditabuntur*, Psal 90.9 for, as a tale that is told; *Concupiscentia spadonis devirginabit juvenculas*, Eccl. 20. 4 *super* for *subter*. Gen. 35 8. *Vulnera* for *ulcera*, Exod 9.9. *Distinctum* for *bis tinctum*, Exod. 49.28. *Sanctuarii* for *Sancto atrii*, Levit. 6.16. *Tonsis* for *Tusis*, Levit. 22.24. *Neque* for *atque*, Levit. 25.11. *Solis*, for *salis*, Deut. 29. 23. *Non fuerit* for *fuerit*. Josh. 2.18 *Occidentalem* for *Orientalem*, Jos. 12 3. *Hamata* for *Squamata*, 1 Sam. 17.5 *Vagi habitabunt* for *pagi habitabuntur*, 1 Sam. 27.8. *Judam* for *Judæ* 2 Sam. 6.20. *Tumulum* for *tumultum*, 2 Sam. 18.29. *Lapidas sacri* for *Sæculi*, Prov. 16.11. *Ad alia* for *ad alta*, Prov. 26.2. *Sponsa* for *speciosa*, Cant. 2.13. *Adultera* for *adulta*, Eccles. 42.9. *Infidelem* for *fidelem*, Esa. 17.10. *Immitantes* for *irritantes*: *Terra* for *ter*. Eccles. 48.2,3. *Obsurduit* for *obsorduit*, Esa. 33.19 *Imprudentem* for *impudentè*, Esa. 33.19 *Faunis ficariis* for *fatuis ficariis*, Esa. 50 39 *Vinctas* for *tinctas* Ezec. 23.23. *Ejiciat* for *mittat*. Mat. 9. 38. *Angelus* for *Angulus* Zach. 10.4. *Servivit* for *servavit*, Ose. 12.12. *Confessius* for *confusus*, Mar. 8.38. *Sexta* for *tertia*, Mar. 15 25. *Mytelem* for *Melita*, Act 28.1. *Compellebantur* for *Complebantur*. Luk 8.23. *Placuerunt* for *Latuerunt* Heb 13 2. *Adduxistis* for *addixistis*. Jac. 5 6. *In carne* for *in carcere*, 1 Pet. 3.19. *Appropinquabit* for *appropinquavit*, 1 Pet. 4.7. *Turburum* for *turbarum*, Rev. 19.1. *De igne Chaldeorum* for *de ur Chaldæorum*. Nehem. 9. 7.

In

In theſe and many more (for I meant to give you but an aſſay) the miſtakes are important, and ſuch as make no ſmall change in the Text; which I have therefore produced that I might let you ſee how eaſie it is for a man that takes all things upon truſt to be abuſed by his credulity; and how unſafe it is much more for an unexpert & injudicious perſon to meddle with the holy Oracles of the Almighty.

The concluſion then muſt be, that however it may bee lawfull for the eminently learned, either in ſchooles or families (according as their calling may warrant them) to interpret even difficult Scriptures, and to unty the knots of a Text; yet ſince not many are thus qualified, and thoſe that are ſo qualified, if they neglect to follow the preſcribed rules may eaſily miſcarry, to the great perill both of their own ſouls, and others;

I ſhould

I should therefore advise that this may bee the act of but some few choice persons, and of them, with all possible caution; and that ordinary Christians, if they have a desire, besides all fundamentall truths (which are laid down openly and cleerly in the sacred Word of God) to inform themselves in those darker verities, which lie hidden in more obscure Scriptures, to have recourse to their learned and faithfull Pastors; and rather to rest in that light which they shal receive from their well-digested instructions, then to rely upon their own (perhaps confident, but much weaker) judgement.

RESO-

RESOLUTIONS.

The fourth Decade.

Caſes Matrimoniall.

Case I.

Whether the marriage of a Sonne or Daughter without or againſt the Parents conſent may be accounted lawfull.

MAtrimony, though not a Sacrament, yet a ſacred inſtitution of God, for the comfort and propagation of mankind; is ſo fruitfull of queſtions as that* *Sanchez* the Jeſuite hath ſtuffed

* Thom. Sanchez. Societ. Jeſ. Theol. *De matrimonio*

an

an huge volume with them alone; it were pitty that so many should in that estate be necessary; we meddle not with those secret, and (some of them) immodest curiosities: contenting our selves only with those which meet us every day in the ordinary practise of men: wherof this which you have moved may well challeng the first place: A question wherein I was vehemently pressed in my late western charge, by som persons of greatest eminency in those parts upon occasion of som of their children undutifully carving for themselves in the choice of their matches; The offended parents in the height of their displeasure were very earnest to invalidate & annul the marriage; I gave them in effect the same account of the point, which now I give to you: That this disallowed marriage was one of those things which are unjust and unlawfull to bee done,

done, but being once done are valid.

How unwarrantable and injurious it is in the child to match himſelfe without or againſt the parents conſent, there needs no other Judg then the law of nature it ſelf, which teacheth us that the child is no other then the peculiar goods, and living ſubſtance of the parent; yea, as ſome Civilians have taught us to expreſſe it, he is* *pars viſcerum matris*, a part of the mothers bowels; and part of the pureſt ſubſtance of the father; and therefore ought no more to bee exempted from the parents power of diſpoſing, then the very limbs of his owne body; upon this ground it was that by the law of God it was lawfull for the † Jewes, in caſe of extremity, to ſell, as themſelves, ſo their children alſo to ſervitude; but to thoſe onely of their owne Nation,

* Jaco. Leoniſſa. Conſil. Matrimon. 49 † Exod. 21. 7. Deut. 15. 12, 13.

and in the * law civil there is the like permission, although under certaine conditions; and particularly, in an utter exigency, *Victus causa*; To the latter whereof, som † Expositors hold so strictly, as that they wil not admit this to be don for the redemption of the parent from death, or perpetual bondage; but only to preserve him from affamishing: wherein certainly they are over-strait laced, and too much wedded to syllables; it being questionless the intention of the law to comprehend all equally-pressing necessities; to which they adde that this must be only in the fathers power, and that to a child not emancipated, and left to his owne disposing: It is not in my way to dispute the case with them, take it at the easiest, it sufficiently shewes the great power that nature it self yelds

* L. 2 c. *De patribus qui, &c.* † Covarruv. l. 3. var. c. 14. ex Accursio & aliis. Les. l. 2. c. 5. Dub 4.

to

to the parent over the child, By how much stronger then the parents interest is in the child, so much more wrongfull it must needs bee in the child to neglect his parents in finally bestowing himselfe; And if we look into the positive law of † God, wee shall find the child so wholly left to the parents will and disposition, as that he may, at his pleasure, dispense with, or frustrate the vow of his child made to God himselfe.

Neither do the * Roman doctors generally hold otherwise this day in case of an under-age; and some of them extend this power yet further, yet not without a distinction: holding, that after the age of puberty, those vows only are in the mercy of the father, which may be prejudicial to the government of the family, & paternal pow'r; which is sufficient for my purpose in the question in hand.

† Num 30. 3, 4, 5, 6. * Less. de Jure l. 2. c. 40 du. 14.

And although those Casuists doe sufficiently doat upon their Monkery, and the vows thereunto appertayning, yet they ascribe so much to the bond of filial duty, as that they teach, That a sonne which (his parents being in extreme need, and wanting his help) enters into a religious order, or comes not out of it (though professed) when hee might be likely by his coming forth to bee aidfull to his said Parents, is guilty of a sin against the fift Commandement: so as even with them, the respect to a parent ought to overweigh a vow of religion, although consummate by a solemn profession.

But, that you may not object to me the age of the law as therefore abrogated because Mosaicall, heare what the chosen vessell saies under the new law of the Gospel.

* Navar. Enchir. 4. ptæ. c. 14. n. 14. *Filius qui parentibus in extrema necessitate constitutis, &c.*

If

If any man thinke that he behaveth himſelfe uncomely towards his virgin, if ſhee paſſe the flowre of her age, and need ſo require, let him doe what hee will, hee ſinneth not; let her marry: (1 Cor. 7. 36.) *Neverthelesſe he that ſtandeth ſtedfaſt in his heart, having no neceſſity; but hath power over his owne will, and hath ſo decreed in his heart that he will keep his virgin, doth well, &c.* (ver. 37.) Loe, the Apoſtle ſuppoſeth it in the parents power either to keep his daughter a virgin, or to diſpoſe of her in marriage: ſhe is not her owne, either to hold, or give, but muſt be altogether ordered by the ſuperior will of a parent: Nor, that any force is allowed either way to be uſed towards the daughter; whether to continue her in a conſtrained virginity, or to call her againſt her minde upon a diſaffected match; No, that God who diſpoſeth all things ſweetly, would have us

doe so too; hee allowes parents to be rulers of their children, but not tyrants: what they doe therefore in this kinde, must be more by counsel then command: and with more sway of love then authority: thus, consulting wisely with the state of times and the childs disposition and abilities of contayning, must the parent either keep his virgin, or labour for the provision of a meete consortship. Thus did the two great Patriarchs of Gods ancient Church, *Abraham* and *Isaac*, provide fit matches for their holy seed; whiles the unholy provided unfit matches for themselves: Thus did their godly issue in all generations take their parents along with them in the choice of meet yoke-fellowes, whiles the godlesse, whether out of impetuous lust, or stubborn disobedience, affect with *Esau*, *Gen.* 28. 6, 7, 8. to be their owne purveyors, to the great regret, and heart-

heart-breaking of their parents.

Lastly, the latitude that S. *Paul* gives of the liberty of marriage to al Christians is, *Tantum in Domino*, *only in the Lord*, 1 *Cor.* 7.39. Now how can that marriage bee in the Lord, which is against him? and how can that bee other then against the Lord, which is against the Lords commandement? And what commandment can be more expres then *Honor thy father and thy mother*, *Gal.* 6.1. And, *Children obey your parents* &c. 3. And what can bee more contrary to the honour and obedience due to Parents, then to neglect them in the main business that concernes our lives? And what business can concern our life so much, as the choice of a meet partner, with whom we may comfortably weare out all the dayes of our pilgrimage on earth?

Doubtlesse then, we may in a ge-

nerality safely conclude, that it is altogether unlawfull for a childe to sleight his Parents consent in the choice of his marriage; There may be some particular cases incident wherein perhaps this may without sinne or blame be forborn; as when the child either by generall permission, or former elocation shall be out of the Parents disposing, or where the parent is defective in his intellectuals, or where the child lives *in remotis*, out of the compasse of intelligence; or where the Parent being averse from the true Religion denies his consent to match with any but those of his own straine; or shall upon other by-occasions wilfully stand upon so unreasonable terms, that neither friends nor authority can over-rule him: But where these or the like preponderating exceptions doe not intervene, the child cannot without sin balk the Parents

consent

consent to his choice in marriage.

But though such marriages without, or against consent, bee not lawfully made; yet being once made, they are valid. * The civill law, out of the grounds of policy, goes herein too far; which sentenceth those marriages void; which are made without the consent of Parents or Guardians; but as Matrimony hath somthing in it of Nature, something of Civility, something of Divinity, as instituted by God, and by him to be regulated; so sure this last interest ought to over-sway the other two; The marriage therefore thus made, being, though faulty, yet true; is doubtlesse after consummation indissoluble. The parties repentance, and the parents sorrow may have leisure to afflict them, no power to relieve them.

* *Matrimonia esse irrita, &c.* Instit. de nuptiis, & ff. de jure nuptiarum. Ita & Evarist. in constit. edita Anno C.

CASE III.

Whether Marriage lawfully made may admit of any cause of divorce, save only for the violation of the marriage bed; by Fornication or Adulterie.

OUr Saviour hath so punctually decided the case in his Divine Sermon upon the mount, that I cannot but wonder at the boldnesse of any man, who calls himself a Christian, that dares raise a question after so full and clear a determination from the mouth of truth it self. *Whosoever* (saith he) *shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced, committeth adultery* Mat. 5. 32. Yet I find this so evident an assertion checked by two sorts of adversaries, The one, certain wild Novellists,

vellists, who admit of very sleight causes of separation; the other, Romish Doctors, who plead for some other main and important additions to this liberty of divorce.

I have heard too much of, & once saw a licentious Pamphlet thrown abroad in these lawlesse times, in the defence and encouragement of Divorces (not to be sued out, that solemnity needed not, but) to be arbitrarily given by the disliking husband, to his displeasing and unquiet wife; upon this ground principally, that Marriage was instituted for the help and comfort of man; where therefore the match proves such, as that the wife doth but pull downe a side, and by her innate peevishnesse, and either sullen, or pettish and froward disposition brings rather discomfort to her husband, the end of Marriage being hereby frustrate, why should it not, saith he, be in the

Husbands power (after some unprevailing means of reclamation attempted) to procure his own peace, by casting off this clog, and to provide for his own peace and contentment in a fitter Match?

Woe is me, To what a passe is the world come that a Christian pretending to Reformation, should dare to tender so loose a project to the publique? I must seriously protest when I first did cast my eye upon the front of the book, I supposed some great wit meant to try his skill in the maintenance of this so wild, and improbable a paradox; but ere I could have run over som of those too well-penned pages, I found the Author was in earnest, and meant seriously to contribute this peece of good councel in way of Reformation to the wise and seasonable care of superiors; I cannot but blush for our age, wherein so bold a motion hath been amongst

amongſt others, admitted to the light: what will all the Chriſtian Churches through the world, to whoſe notice thoſe lines ſhall come, think of our wofull degeneration in theſe deplored times, that ſo uncouth a deſigne ſhould be ſet on foot amongſt us?

Or how can they conſtrue it other then a direct contradiction to our Saviours ſentence, in maintaining that practiſe which hee expreſly profeſſeth to oppoſe? for, what was the Jewiſh guiſe here checked by our Saviour, but a voluntary repudiation of a lawfull wife upon the terms of diſlike, other then fornication? Their miſ-interpretation of the law alluded unto, argues no leſſe; The Law alluded unto is, that of *Deutronomy*; where God ſayes, *When a man hath taken a wife, and hath been her husband, and it ſhall be, that ſhe finde not grace in his eyes, becauſe he hath found in*

* her

* *her master of nakednesse, he shall write her a bill of divorcement, and send her away, Deut.* 24. 1. whereupon he infers with an *Ego dico*, I say unto you, *Whosoever shall put away his wife saving for fornication, causeth her to commit adultery*: the matter of nakednesse therefore, for which the Jews were then wont to divorce their wives, (and offended in so divorcing them) was any other displeasing qualitie, besides the breach of wedlock through bodily uncleannesse, for which only had they dismissed their wives, our Saviour had neither faulted their Glosse nor their Practise; so as herein Christ the giver of the Law, decides one of those great controversies, which were agitated between the emulous schools of *Sammai*, and *Hillel*: determining on *Sammai's* side, that for no other nakednesse but that of adultery it was

* ערות דבר

law

lawfull to divorce a wife: and flatly condemning by the like anſwer that [κατὰ πᾶσαν αἰτίαν] (*Mat.* 19. 3.) every cauſe of repudiation then ordinarily received; as it was by the Phariſee purpoſely propounded unto him.

Anſwerable whereunto is that of the Prophet *Malachi*, who (in our juſt reading) hath ſo fully decided the cauſe, as if it had been expreſly referred to his umpirage: *The Lord* (ſaith he) *hath been witneſſe between thee and the wife of thy youth, againſt whom thou haſt dealt treacherouſly; Yet is ſhe thy companion, and the wife of thy covenant,* *Mal.* 2. 14, 15, 16. (Loe, the wife of thy covenant, therefore too ſure ſetled to bee turn'd off upon every fleight occaſion; what? was thy covenant to take her for thy wife till thou ſhouldſt diſlike her? what were this but to mock God and the world? thy covenant implies no leſs then firmitude and perpetuity.)

There

Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth: For the Lord, the God of Israel, saith, that he hateth putting away; For one covereth violence with his garment, saith the Lord of hosts: Therefore take heed to your spirit that you deal not treacherously. What is this treachery which the Prophet cries out against thus vehemently, thrice over with a breath, but pretended and unjust suggestions against a lawfull wife, for her undue divorce? and what is that violence, but the injurious execution of those suggestions? upon which unsufficient grounds the Lord professes to hate putting away.

Yea how apparently contrary is this practise to the very originall institution of marriage it self? He that made it in Paradise ordained thus: *Therefore shall a man leave his father and his mother, and shall cleave unto his wife;*

wife; and they two ſhall be one fleſh, Gen. 2. 24. Loe, before ever there was father, or mother, or ſon in the world, God hath appointed that the bonds betwixt husband and wife ſhall be more ſtrait and indiſſoluble then betwixt the parent and child; and can any man be ſo unreaſonable as to defend it lawfull, upon ſome unkinde uſages, or thwartneſs of diſpoſition, for a parent to abandon and forſake his child; or the ſon to caſt off his parent? much leſſe therefore may it be thus betwixt an husband & wife: *They two are one fleſh*: Behold here an union of Gods making: A mans body is not more his own, then his wives body is his: And will a man be content to part eaſily with a peece of himſelfe? Or can we thinke that God will indure an union made by himſelf to be ſleightly diſſolved? Or how is this bodily matrimony a lively image of the ſpirituall marri-

age

age betwixt Christ and his Church (who hath said, *I will betroth thee unto me for ever; Yea I will betroth thee unto me in righteousnesse, and in judgement, and in loving kindenesse, and in mercies, Hos.2.19.*) if upon small occasions it may be subject to utter dissolution? Yea, what speak I of Divinity? Even modest Heathens would hisse this Libertinisme off the Stage: Amongst the rest, what a fool was *Socrates*? The Oracle, belike, called him the wisest man of his time; but what a fool was he to indure the unquiet clack of his *Xantippe* with such cool patience, if he might have quit himself of the trouble with a sodain act of her dismission? Or what use was there of those Delegates of *Athens* and the *Harmosyni* of *Lacedæmon* for the peecing up of these domestique breaches betwixt husband and wife, if the imperious husband had power to right himself

by

by turning the scold out of doors?

Lastly, What silly counsail was that which the Jewish Rabbi gave to his client, matcht with a shrew? *The bone that is falne to thy lot, that doe thou gnaw upon*; if it were altogether free for him to leave that bone, and take another?

But I have dwelt too long on so grosse a subject: There may yet seem some better colour for the plea of the Romish doctors which admit infidelity and heresie into the rank of those causes which may warrant a divorce: But herein the ambiguity of the word (if heed be not taken) may deceive you; The * Hebrew text, to which our Saviour alludes, uses a word which signifies excision, or cutting off; The Greek, a departing away, or putting off; The Latine, *Divortium*, in his true sense is not so hainous as either of the other, signi-

* *Deut.* 24. 1.

fying

fying rather a turning aside, but in our ordinary acception amounts to no lesse then both. But what unjust difference they make betwixt finall separation and dissolution, we shall finde in our next discourse. Onwards, that such separation may not be made of man and wife (lawfully joyned together) for heresie or misbelief, we need no other conviction then that peremptory and clear determination of our Saviour which we have formerly insisted on. For though his words on the mount were in a way of doctrinall assertion, yet afterwards the same words were used by him, in way of a satisfactory answer to the Pharises question concerning causes of divorce, professedly resolving that there could be no allowable ground of such separation except fornication. What words can be more plain? It is but a shift to say (as the Cardinall doth) that our Saviour

viour here meant only to expreſſe the proper cauſe of the ſeparation of married perſons, which is the breach of marriage faith: as having no occaſion to ſpeak of thoſe generall grounds which reach to the juſt ſundring of all humane ſocieties, ſuch as Hereſie and Infidelitie, which are enough to unglew all naturall and civill relations betwixt father and ſon, maſter and ſervant, husband and wife. For it is clear that neither queſtion nor anſwer were bounded with any particularities. The Phariſee asks, *Whether for every cauſe?* Our Saviour anſwers, *For no cauſe but fornication*; And it is ſpoken beſide the book, that child or ſervant ſhould or may forſake parent or maſter in caſe of hereſie, or infidelity: S. *Paul* teacheth other Doctrine: *Let as many ſervants as are under the yoke* (of bondage) *count their* (infidell) *maſters worthy of all honour*, 1 Tim. 6. 5. not worthy

thy therefore of desertion and disclamation: And if the servants may not shake off the bonds of duty; much lesse may the son brake or file off the bonds of nature; and as for the matrimoniall knot, how too sure it is to be loosed by infidelity it self, let the Apostle speak; *If any brother hath a wife that beleeveth not, and she be pleased to dwell with him, let him not put her away*, 1 Cor. 7. 12. *And the woman which hath an husband that beleeveth not, and if he be pleased to dwell with her, let her not leave him*, ver. 13. And if even Infidelity have not power to dis-oblige the wife or husband, much lesse Heresie. In this pretended case therefore to separate from board and bed, is no better then a presumptuous insolence; It is the peremptory charge of Christ, *What God hath joyned together, let not man put asunder*, Mat. 19. 6. In all lawfull marriages, it is God that joyns the

hands

hands and hearts of the Married. How dare man then undoe the work of God upon deviſes of his own? Had the Lord ever ſaid, If thy wife be a wilfull miſ-beleever, rid thy hands of her; this ſeparation were juſt; but now that his charge is clean contrary, what an impious ſaucineſs is it to diſ-joyn thoſe whom God hath united?

As therefore, it is not in the power of any third perſon, upon any whatſoever pretence, violently to break the ſacred bond of Marriage; ſo neither may the husband or wife enthral each other by a wilfull deſertion; whether upon pretext of religion, or any ſecular occaſion; In which cauſe what is to be don muſt come under a further diſquiſition; Certainly it was never the intention of the holy and wiſe God, by vertue of that which was ordained for mans comfort and remedy of ſin, to binde him

him to a remedilesse misery; which must necessarily fall out, if upon the departure of an unbeleeving or heretickall yoke-fellow, the relict party must be tyed up to a perpetuall necessity of either containing, (if he can) or, if he can not, of burning; The wise Doctor of the Gentiles well fore-saw the dangerous inconvenience that must needs hereupon ensue, and hath given order for prevention, accordingly.

But if the unbeleeving depart, let him depart; *A brother or a sister is not under bondage in such cases; but God hath called us to peace*, 1 *Cor*. 7. 15. Not, that it is free for a man or woman so forsaken, to carve him, or her self of redresse (what an infinite confusion would follow upon such licentiousnesse?) but that after long and patient expectation, and all probable means used for the reduction of the party deserting; recourse be had (as to the last

last refuge) to publique ecclesiastical authority (which is the fittest to manage these matrimoniall affairs) in whose power it may be, either by grave admonitions, and just censures to bring back the offendor to his duty, or upon his continuing contempt, to set a day for the publication of the just freedom of the forsaken: wherein they shall doe no other then execute that Apostolike sentence for exemption from an unjust bondage, and providing for a just peace.

Case III.

Whether after a lawfull Divorce for Adultery, the innocent party may marry again.

Although Matrimony be not, according to the Romish tenet, one of those Sacraments which imprint an indeleble Character in the re-

receiver; yet it hath, as they hold, such a secret influence upon the soul, as that it leaves a perpetuall bond behind it, never to be dissolved till death; So as those offenders, which by just censure are separated from the board and the bed, cannot yet be freed from the bond of marriage: upon this ground it is that they bar the innocent party from the benefit of a second marriage, as supposing the obligation of the former still in force. In the ordinary Bills of the Jewish divorce, the repudiated wife had full scope given her of a second choice; as the words ran: * *She was to be free, and to have power over her own soul; to go away; to be married to any man whom she would.* They were not more liberall, then our Romish divorcers are niggardly: The Jewish divorce being upon unwarrantable cause, made their liberality

* Maimon. Treat. of Divorce.

so

ſo much more ſinfull, as their divorce was more unjuſt: for the divorced woman was ſtill in right the lawfull wife of that unrighteous huſband that diſmiſſed her; the Romiſh doctrine makes their ſtrait-handedneſſe ſo much more injurious, as the cauſe of ſeparation is more juſt.

Even this queſtion alſo is expreſly determined by our Saviour in his anſwer to the Phariſee: *Whoſoever ſhall put away his wife, except it be for fornication, and marrieth another, committeth adultery: Mat.* 19. So then, he that for ſo juſt a cauſe as fornication putteth away his wife and marrieth another, committeth not adultery: the exception manifeſtly implies ſo much, both in reaſon and common uſe: neither indeed, are the words capible of any other probable ſenſe: That which *Bellarmine* would faſten upon it, referring the exception to the former clauſe, of diſmiſſion on-

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ly, so as it might be lawfull to divorce only for fornication, but not to marry after divorce; cannot stand without a supply of words of his own, which God never alow'd him to interfert; and besides utterly destroies the sense; casting such a doctrine upon our Saviour, as he would hate to own; for except that restraint be refered to the marrying again, the sense would run thus, *whosoever puts away his wife commits adultery*; which stands not with truth or reason: sith it is not the dismission that is adulterous, but the marryage of another: It is therefore the plain drift of our Saviour, to teach the Pharisee, that the marriage of a second wife (after dismission of a former, upon any other cause, except for fornication) is no less then adultery: thereby enforcing, that upon a just dismission for fornication, a second marriage cannot be branded with adultery.

Nether

Neither will it ſerve his turne, which he would borrow from St. *Auguſtine*, that upon this negative of our Saviours, *we* may not look to build an affirmative of our own; for though it be granted, that he, who putting away his wife not for fornication, & marrieth another, ſinneth; yet it followes not that he who having diſmiſſed his wife for fornication, marrieth another, ſinneth not at all: A ſin it may be, though not an adultery: For ſurely if it be a ſinne; it muſt be againſt a commandement; and if againſt any commandement, it muſt be againſt the ſeventh; and what is the ſeventh cõmandement, but *Thou ſhalt not commit Adultery?* Beſides, the Phariſees queſtion [*Is it lawfull for a man to put away his wife for every cauſe?*] was not without a plaine implication of liberty to marry another; which our Saviour well knowing, gives a full anſwer as well

to what he meant, as what hee said; which had not been perfectly satisfactory, if he had only determined that one part concerning dismission, and not the other concerning marriage; which clause if two other Evangelists expresse not, yet it must bee fetcht necessarily from the third; since it is a sure & irrefragable rule; *That all four Evangelists make up one perfect Gospell*, It is therefore a very tottering and unsure ground which our Rhemists build upon; as if the Apostle meant to crosse his Lord and master, when hee saith, *The woman which hath an husband is bound by the Law to her husband, so long as hee liveth, Rom. 7.2.* therfore only death can dissolve the bond of marriage; not divorce, not adultery, not divorce for adultery: For how plainly doe the words carry their answer in themselves: * *The woman* (saith the

* So also 1 Cor. 7. 39.

(Apostle

Apostle) that hath an husband: but the woman legally divorced for fornication, hath no husband: S. Paul speakes of a true wife, not a divorced harlot: hee had no occasion here to look aside at matter of divorce, but takes marriage as in its intire right, rather desiring to urge (for clearing the case of our obligation to the law) that the husband being once dead, the wife is free to marry again, then to intimate the case of her incapacity to marry till he be dead.

As for that bond therfore, which is so much stood upon, if it be taken without all relations to the duties of bed and board, it is meerly Chimericall, nothing but fansie. There are, or should bee Bonds of affectation, Bonds of mutual respects, and reciprocall duties betwixt man and wife, and these must hold firme notwithstanding any locall separation, neither time, nor place may so much

as slacken, much lesse loose them: but where a just divorce intervenes, these bonds are chopt in peeces, and no more are, then if they had never beene: And if all relations cease in death (as they doe, in whatsoever kind) surely divorce, being (as it is) no other then a legall death, doth utterly cut off (as the hebrew term importes) all former obligations and respects betwixt the partys so finaly separated.

The adulterous wife therfore daly divorced being thus dead in law as to her husband, the husband stands now as free as if he had never married, so as I know not why the Apostle should not as well speake to him as to any other; when he saith: *Nevertheless to avoid fornication, let every man have his own wife*, 1 *Cor.* 7. 2. Neither is it otherwise in the case of a chaste wife after her separation from an adulterous husband, *Mar.* 10. 12.

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In these rights God makes no difference of sexes, both may lawfully claim the same immunities: which certainly should they be denied to either, must needs draw on very great inconveniences: For in how hard a condition should the innocent party be hereupon left? Either the husband or wife must bee forced to live with an adultrous consort, or be tyed to a perpetuall necessity of either doing that (which perhaps they cannot do) containing, or of suffering that which they ought not to endure, burning.

What remedy now can bee expected of so great a mischief? Our Romish doctors propose two, Reconciliation, or Continence: Both good, where they may be had; Reconciliation, in case of a seasonable & submisse repentance; That which is the Apostles charge in case of desertion, holds here also, [καταλλαγήτω] let her

be reconciled; the more hainous the wrong is, the more commendable is the remission.

Continence, after such separation, in case of ability so granted: for surely this holy disposition is a gift; and therfore is not had, where it is not bestowed; those that place it in our power, derogate from the thanks of the giver: yea, he that gives it tels us *all cannot receive it*, *Mar.* 19. 11. hee must not only give it, but give us power to take it.

But where the offending party is obstinately vicious; & the innocent (after all endeavors) unable to contain, without a supply of marriage, the case is remediless, and we know Gods mercy such, as that he leaves no man for matter of resolution utterly perplexed.

Shortly then, I doubt not but I may notwithstanding great authorities to the contrary) safely resolve, that

that in the case of divorce it is lawful for the innocent person to marry; But for that I finde the * Church of *England* hitherto somwhat tender in the point, and this practice, where it rarely falls, generally held, though not sinfull, yet of ill report, and obnoxious to various censures; I should therfore earnestly advise and exhort those whom it may concerne, carefully and effectually to apply themselves to the fore-mentioned remedies; Reconciliation, if it be possible, to prevent a divorce; Holy endeavors of a continued continence (if it may be obtain'd) to prevent a second marriage after divorce: But if these prevail not, I dare not lay a load upon any mans conscience which God hath not burdened; I dare not ensnare those whom God will have free.

* Decreeing to take bonds of the persons divorced to remain single. Can. & Constit. c. 107.

Case IV.

Whether the authoritie of a Father may reach so farre as to command or compell the Child to dispose of himself in Marriage where hee shall appoint.

THe extent of a paternal power, as we have partly shewed already, hath been wont to be very large, reaching in som cases by the Civill law to the life of the Child; and by the Jewish law, to his liberty: so as it might seem much more over-ruling in case of Marriage; which also seemes to be intimated by the Apostle in that he supposes and gives a power to the parent either *to give or keep his virgin*: And how apt parents are to make use of this awfull authority in matching their children for their own worldly advantage, contrary to their affections and dis-

position

poſition, we have too lamentable experience every day; neither is it eaſy to ſet forth the miſchievous effects that have followed upon thoſe compelled marriages: for hence enſue perpetuall diſcontentments to the parties ſo forcedly conjoyned; an utter fruſtration of the end of mariage, which ſhould be mutuall comfort: and not ſeldome, dangerous machinations againſt the life of the diſaffected conſort; as it were too eaſie to inſtance every where; but eſpecially if the affections of the yong couple have been before (as it oft falls out) placed elſewhere; what ſecret heart burnings; what loathing of conjugall ſociety; what adulterous plottings doe ſtraight follow; what unkind defiances paſſe between them: how do they weare out their days in a melancholick pining, & wiſh each other, & themſelves dead too ſoon? Yea herin an imperious or covetous

parent may be most injurious to him selfe, in robbing himselfe of that comfort which he might receive from a dutifull child in her person, in her posterity; for the avoiding of which mischiefs it were meet & happy, that both parent and child could both know their limits, which God, and nature hath set, and keep them.

Let the child then know that he is his parents, that as he was once a part of them, in respect of his natural being, so he should be still in his affections, and obsequiousnes, and therefore that hee ought to labour by all means to bring his heart unto a conformity to his parents will & desire, according to that universall rule of the Apostle, *Children obey your parents in all things; for this is well pleasing unto the Lord: Colos.* 3. 20. The word is comprehensive, *In all things.* Things unlawfull passe for impossible; we only can doe what we ought.

In

in all thoſe things then which are honeſt, lawfull, juſt, parents muſt be obeyed: And the motions for marriage being ſuch, impoſe upon the child ſo far a duty of obedience as that he is bound to work his affections what he may to a compliance with his parents will; the wilful neglect whereof is no better then a kind of domeſtique rebellion.

Let the parent again conſider that the child however derived from his loins, is now an entire perſon in himſelf; that though the body came from him, yet the ſoule was from above; that the ſoul of his child is endowed with powers and faculties of its own; that as he is not animated by his parents ſpirits, ſo he is not inwardly ſwayed by his parents will or affections; that when his reaſon coms to be improved, there may bee differences of judgement betwixt his parent and him, and from thence may

ariſe

arise a diversity or contrariety of affections and desires; and these affections and passions may grow to such strength as that he himselfe shall not be able to master them; and if the parent feele himself subject to such infirmities, well may he be induced to pity those whom a vigorous heat of youth hath rendred more headstrong and unruly; wirhall, let him consider that though the child shold be advised by the parent, yet it is fit that he should like for himselfe; that the will is to be led, not driven; that no marriage can be happy, but that which is grounded in love; that love is so altogether voluntary, that it can not consist with constraint.

Lastly, let him know that the power of the father though great, yet is not unlimited; It is the charge which the father of mercies hath laid upon all earthly fathers in their carriage towards their children; *Fathers, provoke*

voke not your children to wrath (or (as the * Vulgar reads it) *to indignation*) *leſt they be diſcouraged*: and ſurely, if there be any thing wherein the paſſion of the child may be like to be inordinarely ſtirred, it is in the croſſing of an once-well-ſetled affection, and diverting the ſtreame of love into another channell; For the avoiding whereof the imperiall lawes have been ſo indulgent to the child, as that (according to their beſt gloſſes) they permit not the father to diſinherit the daughter for chooſing an husband not unworthy of her ſelf, though againſt her fathers mind; yea ſome of them have gone a ſtep further: but I forbeare: How far it may be lawfull and fit for the parent to puniſh the diſreſpect of a child, in ſo important a caſe, is not for me to determine; doubtleſſe where the proviſion is

* Μὴ παροργίζετε, *Eph.* 6. 4. Μὴ ἐρεθίζετε, *Coloſ.* 3. 2.

arbitrary

arbitrary, the parent will be apt so to manage it, as to make the child sensible of a disobedience, so as both parts herein suffer, and are put into a way of late repentance.

Briefly therefore, on the one side the Son or Daughter doe justly offend, if without cause, or wilfully they refuse the parents choyce; and are in duty bound to worke their hearts to an obedient subjection to those, unto whom they owe themselves; and for this cause must bee wary in suffering their affections to over-runne their owne reason, and their parents guidance; eyther suppressing the first motions of unruly passions, or if they grow impetuous, venting them betimes into the tender eares of their indulgent Parents, or discreet and faithful friends; that so they may seasonably prevent their own misery, and their parents grief: On the other side the parent shal of-

fend

ſence, if holding too hard an hand over the fruit of his own body, he ſhall reſolve violently to force the childs affections to his own bent; & where he finds them ſetled wil rather break then bow them; not caring ſo much to perſwade as to compell love: Theſe harſhneſſes have too much of Tyranny in them to be incident to a Chriſtian parent; who muſt tranſact all theſe matrimonial affaires in a ſmooth & plauſible way of conſent & indulgence: A noble and ancient pattern whereof we find in the contract betwixt *Iſaac* & his *Rebecca*, *Gen.* 24.49,50,51,52,&c. the match was treated on betwixt *Abrahams* proxie, and the maids father *Bethuel*, and her brother *Laban*: The circumſtances drew their full conſent; all is agreed upon betwixt parents; but when all this is don, nothing is don, till *Rebecca* have given her aſſent; they ſaid, *Wee will call the damſell, and enquire at her mouth*

mouth, ver. 57. *And they called* Rebecca, *and said unto her, Wilt thou go with this man? And she said, I will go.* ver. 58. Now the contract is made up; till then, all the engagements of *Bethuel* and *Laban* were but complements; Till then, all the rich Jewels of Gold and Silver given to the intended Bride; and all the precious things given to her mother, & brother, were but at the mercy of the receivers; Neither ought it to be other in all Christian espousals; the free and cheerfull consent of parents and parties makes the match both full and happy; Let not the Childe dare to crosse his parents; let not the Parent think to force the child; and when an undue bargain is, through the heat of passion, made up past reclamation, let love and pity so far intercede for the offenders, that they may smart for their rashness & neglect, without their utter undoing.

CASE

Case V.

Whether the marriage of Conſens Germans, that is, of Brothers or Siſters Children, be lawfull.

THe diſpleaſure of the Canon law againſt ſuch marriages is ſo high flowne, that no leſſe can take it off then an utter diremtion of them even though they be not ratified only, but conſummate by carnall knowledg, and the grave authority of ſome ancient and holy Fathers, and eminent Doctors of the Church (beſides five ſeverall Councels) have paſſed an hard ſentence upon them. The maine ground of the ſuppoſed unlawfulneſs, is, that clauſe of Gods Law which was more then judiciall: *No man ſhall approach unto any neere of kin to his fleſh to uncover their nakedneſſe; I am the Lord, Levit.* 18. 6. Which though *Cornelius*

nelius à Lapide * (following his *Radulphus*) would seeme to restraine to the ensuing particularities onely; yet they may not think that God will suffer so universal a charge to be so straitly pent; especially, when we know that there are divers other no lesse unlawful copulations omitted in this black-Roll of uncleannesses, then those which are expresly mentioned; the rest being intended to come in by way of analogy only: for it is easy for any reader to observe, that all the severalities of the degrees prohibited run still upon the male; under which, if the like exorbitances of the other sexe were not meant to be comprehended, females should be lawlesse, and the lawe imperfect; To marry then with a Cousen-german is apprehended by these Canonists to be an approach to *one neare kinne to our flesh*; and therefore

* Cor à Lap. in locum.

fore

fore intimated in that inhibition: Doctor* *Willet* (a man much deſerving of Gods Church) conceives theſe marriages to bee analogically forbidden in this catalogue of *Moſes*. For, ſaith he, if the degrees of affinity be limited to the third or fourth degree; as it is not lawfull for a man to marry his wives daughters daughter (*Levit.* 18. 17.) why ſhould not the line of conſanguinity hold to the fourth degree likwiſe; and ſo neither the ſonne to marry his fathers brothers daughter; or the daughter the ſonne? But that worthy Divine did not heedfully obſerve the great difference betwixt theſe inſtanced degrees; for the one of theſe is an equal line, the other in an unequal; the one is a collaterall conſanguinity, the other is in a directly deſcending affinity; ſo as the husband ſhould bee grandfather in law to the wife, which

* *Will. Syno. Contraver.* 15. *de Matr.* q. 3.

in

in all reason were very unlawful, and absurd; since in all those descending degrees there is a kinde of reverential inequality betwixt the lower and superiour, which abhorres from all proportion of a match: whereas the collateral equidistance of Coulens-german from the stock whence both descend, hath in it no such appearance of inequality, Certainly then, no analogy can draw these marriages within the prohibition; whether the neerenesse of approach to our flesh be a just bar to them, must be further considered.

Gregory *, (whom some would faine interess in our English Apostleship) writing to his *Augustine*, in way of answere to his Interrogations puts these mariages in the same rank with the marriages of brothers and sisters, which hee brands with this note, that they seldom ever prove

* *Greg.* resp. ad Interrog. *Augustini.* q. 6.

fruit-

fruitfull; As for those of brothers and sisters (which were usual, as *Diodorus Siculus* tells us) amongst the *Egiptians*, and are this day in use in barbarous nations) nature it selfe abominates the mention of them: In the first plantation of the world there was a necessity of them, as without which there could have been no humane generation; but afterwards, as the Earth grew more peopled, so these matches grew still more odious: like as it was also in the first plantation of the Church; the holy Seed being confined to a narrow compasse, were forced, unlesse they would joyne with Infidels, to match sometimes over-neer to themselves, as even *Abraham* himself, the father of the faithfull, married his brothers daughter: but when the bounds of men and beleevers came to be enlarged, the greater elbow-room opened a wider liberty of choice; and now

Gods

Gods select people found it meet to observe a due distance in the elections of their wives, so regarding the entireness of their Tribes, as that they fell not within the lines of prohibition, wherein no mention being made of brothers and sisters children in all ages and nations, some have thought fit to make use of their freedom in this kind.

What needs I to urge the case of *Zelophehads* five daughters, *Num.* 36. 11. who by Gods own approbation, were married to their fathers brothers sonnes; To mince the matter, and to make these sonnes, nephews, according ao the Hebrew phrase (as Doctor *Willet* indeavors to doe) is without either need or warrant; since these scruples were not since that time stood upon by the Jewish people: yea this practise was no lesse current among the civiller heathens of old; I could tell you of

Cluentia

Cluentia * (by *Ciceroes* relation) married to her cousen *Marc. Aurius*, of *Marcus Antonius* the wise and vertuous Philosopher, marrying his cousen *Faustina*, and a world of others: were not this labor saved me by the learned lawyer *Hotoman*, who tells us how universall this liberty was of old, as being enacted by the lawes of the Roman Empire, and descending to the lawes of † *Justitian*, confidently affirmes that for five hundred yeeres, all Christian people (*magno consensu*) allowed and followed these Imperiall constitutions concerning Matrimony: Although I might here put him in minde of *Theodosius* enacting the contrary in his time, as it is like, by S. * *Ambroses* instigation, who then sharply inveighed against these matches in a

* Cic. orat. pro *Cluentio* † *Hotoman* de grad. cognat. *Laurent. Kirchovius* Profes. *Rostoch.* in consil. Matrimon. * *Ambr.* ep. ad Paternum 66.

vehement epistle to *Paternus*; being then in hand with a marriage betwixt his son & his sisters daughter. But excepting that good Emperour, the coast was cleare perhaps, for the Cesarean constitutions; not so for the judgement of Divines; amongst whom, it were enough that S. *Ambrose* and S. *Augustine* (the flower of the Latine fathers) if no other, doe bitterly oppose it. This judgement being found not probable only, but exceeding profitable to the Roman See, it is no wonder if it obteyned both credit and vigour from thence. Decrees & Decretals make this inhibition good, not without damning the contrary practise, and now the Civill and Canon lawes clashing with one another, how can it be but the prevalence must be according to the power of the abettor? What liberty the Court of Rome hath taken to it self in the restraint of marriages,

ges, and upon what ground; all Christendome both sees and feeles. One while their prohibition reaches to the seventh degree in naturall kindred, then to the fourth: One while the impediment of spirituall cognation, is streched so far, without any colour of divine authority, as that (what by * Baptisme, what by Confirmation) twenty severall persons are excluded from the capacitie of intermarriage. Another while the market is taln to fourteene. And wherefore this? but for the swees & scarce valuable gaine of Dispensations, upon these occasions flowing in to the Lateran treasure? For which considerations wee have learned not to attribute too much to the judgement or practise of the Roman courtiers in this point. Upon the suming

* Hodie cessat fraternitas & aliqua ex parte compaternitas per concilium Trident. Sess. 24. Navar. c. 22. n. 27.

up then of this discourse, will you bee pleased to see the vast latitude of different opinions concerning these marriages? The Canon lawe decryes them with such rigour, as to ordain them (though after a conjugall conversation) separated; some moderate Divines (as Doctor *Willet*) finding this sentence too hard, goe not so far, but hold this neerness of blood a sufficient bar to hinder a marriage contracted, though not consummate: som others (as Mr. *Perkins* in my conference with him) hold it, though not unlawfull, yet inconvenient: som others (as learned and accute M. *Wootton*, and M. *Attersull*) who have written a very large discourse in way of vindication of them) hold them both lawfull, and not inexpedient; * *Heteman* yet higher, *pium & Christianum esse, quod du-*

* *Heteman* de ritu Matrimon. p. 6. citante *Nicbovio*, ut supra.

dum

orum ſororum liberi matrimonio copulentur; that ſuch a marriage is pious and Chriſtian? In all this variety if you deſire my opinion, I ſhall neyther cenſure ſuch marriages where they are made, nor yet incourage them to be made where they are not: to thoſe that are free I ſhould be apt to ſuggeſt counſails of forbearance, the world is wide, the choice abundant; let it be never ſo lawfull, yet how unwiſe and unſafe were it to put the conſcience upon the nicety of a dangerous ſcruple, when it may keep aloof off with a cleere freedom and reſolute contentment? That theſe marriages are diſallowed by ſo great authority, ſhould bee reaſon enough to divert the free thoughts to a ſafer election; and againe, that theſe marriages are allowed both by Civill lawes, and by the judgement of eminent Divines; and not any where forbidden eyther (*Jure Cæſareo* or

Apostolico) by Gods law or *Cæsars*, should be reason enough to bear up the hearts of those who are so matched from a scrupulous dejection. Let the persons therfore so married enjoy themselves with mutual complacency and comfort, not disquieting themselves with needlesse anxieties; Let those single persons who have the world before them look further off; and fasten their affections at a more unquestionable distance: As it was wont to be worthy M. *Perkins* his expression to this purpose; Let those who must walke close to the brim of a steep precipice, look well to their feete and tread sure, and so they may come off perhaps as safely as those that are further off; but if a man be to choose his way, let him so cast it, as that he may not approach neere to the brink of danger.

CASE.

Case VI.

Whether it is necessary or requisite there should be a witnessed contract, or espousals of the parties to bee Married, before the solemnization of the Marriage.

IT is necessary wee should distinguish betwixt those things which are essentiall to the very being of marriage, & those which are requisite to the orderly and well-being of it: It may not be denyed that the marriage is true & valid, which with full consent of parties is made without the intervention of a previous contract in a due & lawful form prescribed by the Church: but it is no less true that such a marriage is very unmeet, & liable to just exceptions: That * God, who is the author & institutor of marriage made a differ-

* *Exod.* 22. 16. *Levit.* 19. 20. *Deut.* 20. 7. *Deut.* 22. 25. 23. 28. *Jer.* 2.

rence in his law, betwixt a betrothing & a matrimony, he that ordained the one, ordained the other also, and ordained the one in order to the other: And this was constantly observed in the practise of Gods ancient people accordingly, so we finde the blessed * Virgin espoused to *Joseph* before his taking her to wife, neither did the Christian Church think fit to vary from so holy a pattern; whereto S. † *Paul* alludes, when writing to, and of the Church of *Corinth* which he had happily planted, and forwarded in grace he saith, *I have espoused you to one husband, that I may present you as a chaste Virgin to Christ.* Loe he hath betrothed them to Christ in that he had entred them into a Covenant of grace, and prepared their soules for a full consummation of their blessed union with

* Compare *Matt.* 1. 18. with *Deut.* 22. 23. † *Magdeburg.* Cent. 2. de Conjugio 2 *Cor.* 11. 2.

Christ

Christ in glory, intimating (as Matrimony is a lively resemblance of our spirituall conjunction with the Lord of glory) that our bodily espousalls here below, are they which must make way for a complete marriage ensuing: It were not difficult, if it were needfull, to deduce this holy practise downe from the primitive times to the present: Before the *Nicene* Councell we find the Synod of *Ancyra** enjoyning a severe penance to the man that should defile his body by an incestuous copulation, after espousalls contracted: And the Councell of *Eliberis* or *Granada*, about the time of the *Nicene* convention, takes such notice of these betrothings, as that it decreed †, that if any Parents should break the faith mutually engaged in these espousals, they should bee held off during the space of three yeeres from the Com-

* Concil. *Anciran.* can. 24. † Concil. *Eliv.* c. 45.

munion. What should I trouble you with the Decree of * *Syricius* concerning these contracts; or with the pregnant testimonies of S. *Chrysostom* and *Ambrose* to this purpose; which were but to wast time & paper upon so cleere a truth? As there was no Christian Church which did not carefully observe this sacred Rite: so above all other the Roman hath been at least curious enough in calling for a strict and severe account of their espousals: What voluminous discourses? What a world of nice questions have faln from the pens of their Canonists and Casuists concerning this subject? Certainly this is a point of so much use and agitation amongst them, that were it not for the quarels arising herefrom, it is to bee feared their consistories would want work, and their Advocates imployment: But to speake ingenuously,

* *Luitprand* in *Syric.*

those

thoſe of the Roman Clientele are not more careful & punctual in ſcaning, and obſerving the rules and practiſe of their eſpouſals, then ours here are incurious of both: How many have we heard to ſay, they wil make no promiſe of themſelves till they come to the Church-dore? and of thoſe that doe contract themſelves, how weakly & inſufficiently is it performed on many hands? ſo as their act, if queſtioned, is no way obliging; nor ſuch as upon the leaſt diſcontent, will indure a conteſtation.

Now whereas there is a double contract or eſpouſall, the one of the future, the other of the preſent: that of the preſent, if it bee expreſſed in ful termes, differs nothing from mariage it ſelf, ſave only in the publick ſolemnization; which doubtleſſe is a ceremony ſo requiſite, as that without it an horrible confuſion muſt needs

needes follow both in Church and State.

That of the future, is a mutuall engagement of both parties, that they will marry each other; which is most properly an espousall-Contract; giving both assurance to each other of a mutuall consent to a Matrimony that shall bee; and yet withall some meet respiration of a more full triall and inquiry into each others condition: For which purpose the wisdom of the Church hath ordained that there should be a solemne publication of that more private Contract three severall Sabbaths, to the whole Congregation, not with ut the earnest charge of a discovery of whatsoever impediment might justly hinder the intended matrimony.

The frequent, but unfit, use of these espousall Contracts in the Roman Church, betwixt their children

in

in minority (allowing * seven yeers in eyther parry for a meete age to this purpose) must needs breed both much question and inconvenience: but in those which are of a mature age, and therefore able to judge of what may bee most expedient for themselves, this institution cannot be but singularly usefull & beneficiall; For neither is it meet that so great a work, and so highly importing us as matrimony, should bee rashly and suddainly undertaken; neither doth it a little conduce to our safety, that since marriage once passed is irrevertible, we may have som breathing-time betwixt our promise and accomplishment to inform our selves throughly before it bee too late, what we must trust to for ever. For we may take notice, that though mar

* *Ætas legitimè contrahendi matrimonium, est in masculis 14 annos, in fœminis 12 Sponsalibus autem contrahendis, septem in utriusque.* Navar. c. 22. n. 28

riage

riage is indissoluble, yet these espousals, or contracts of a future marriage are not so; many things may intervene betwixt this engagement by promise, and that a full and compleat solemnization, which may break off the match.

The Casuists determine of seventeen severall cases, at the least, which may sort to this effect; som whereof have a proper relation to the Romish religion; others are common to what ever contracts of this kind; I shall not grudge you the mention of them all. An espousall-Contract therefore may (according to their judgement) be broken off.

By the willing remission of both parts, although it had been seconded by an oath: By the entrance of the one party into some order of religion: By a contract with some other in words of the present: By the travaile of one of the parties into remote

more countries, and not returning upon a lawfull summuns at a time prefixed by the Judge: By an affinity supervening upon the sinfull copulation of one of the parties with the near kinswoman of the other: By the absolution of the Judg upon suit of one of the parties repenting and pleading minority: By lapse of the time set for the accomplishment of the marriage by the disease of one of the parties being fallen into Palsie, leprosie, the Neopolitan sickness, or any other contagious distemper, or notable deformity. By the fornication of one of the parties committed since the contract: By a vow of chastity preceding the contract: By some capitall enmity intervening betwixt the families and persons of the contracted by the omission of performing the promised conditions; as when the dowry agreed upon, is retracted or held off: By the fame of

a

a Canonicall impediment, By suscep tion of Orders after contract; By the supervention of a legall kindred, inexpected; By the harshnesse and asperity of disposition in either party. And (which may comprise many other particularities; by the falling out and discovery of any such accident, or event, as if it had beene sooner knowne would have prevented the making of such a contract; All these say they, may bar a marriage after espousalls: but yet so, as that the parties may not be their own arbiters, to break off their contracts at pleasure, but must have recourse to the Judge Ecclesiasticall; and submit themselves to the over-ruling sentence of the Church.

If you balk those which are proper to the Romish superstition, yet you shall finde many just and allowable causes which may (after a contract of espousall) interrupt a purposed

sed matrimony: so as, if there were neither rule, nor example of any such preceding engagement, yet surely, it were very fit for our own security, and our confident and comfortable entrance into that estate which we shall never put off, to observe carefully this previous betrothing of our selves ere wee knit the knot that can never be looſed.

CAP. VII.

Whether there ought to bee a prohibition and forbearance of marriages, and marriage duties for some appointed times.

IT is one thing what is lawful another thing what is fit and expedient; as S. *Paul* hath taught us to distinguish: marriage being of Gods own institution, and that in the perfection of Paradise, there can be no

time

time wherein it may be unlawful to celebrate it; yet there may be times wherein it is unfit: There is the like reason of times and places; both of them are circumstances alike; The debt of the marriage-bed not onely may, but must bee paid by them whom God hath called to that estate yet there are places wherein it were barbarous and piacular to defray it: even, besides those places which are destin'd to an holy use, the Jewes of old held this act done in the field or under a tree, worthy of scourging: Doubtlesse* there are times so wholly consecrated to devotion, as that therein it would be utterly unseasonable to let our thoughts loose to the most lawful pleasures. Hence is that charge of the Apostle, *Defraud not one the other, except it be with consent for the time, that ye may give your selves to fasting and prayer*: 1 Cor. 7. 5.

* *Maimon. Sbicard.* de Reg.

So

So then as *Solomon* himſelfe can ſay, *There is a time to embrace, and a time to refrain from embracing.* Eccluſ. 3. 5. But what the limitation of this time may be, no ſmall queſtion hath been raiſed in the Church of God: neyther doe there want extremities on both ſides: The Church of *Rome* hath heretofore been exceſſively large in her prohibitions; forbiding the ſolemnization of marriage upon pretence of the holineſs of the great feaſts to be obſerved; for the whole third part of the yeere; neither doth the account fall leſſe, if we reckon from the Advent to the Epiphany; from Septuageſima Sunday to the Octaves of Eaſter; and from three dayes before the Aſcenſion to the Octaves of Pentecoſt; all which had wont to be ſtrictly kept; beſides the feaſt of S. *John* Baptiſt added by ſome; and the foure Ember weekes by others; but now of late upon ſe-

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cond thoughts, their Councell of *Trent* [1] have found it meet to shorten the restraint, and somewhat to enlarge the liberty of the seasons for marriage, having exempted the two only solemn feasts of Easter and the Nativitie, and abridged some previous weekes of the former: and for us how observant our Consistories had wont to bee of those inhibitions for their own gain, every Almanack can witnesse. Some worthy Divines in our Church did not stick to professe their great dislike of our conforming herein to the Church of *Rome*, to the scandal of the Reformed: Concerning both which, I must say: that if either wee or they doe put any holinesse in the time exempted, or any unholinesse in the act inhibited, we cánot be excused from superstition, Can any time be more holy then Gods owne day? yet on

[1] Concil. Trid. Sess. 24.

that

that day wee doe commonly both publish marriages, and celebrate them. But it, as in some solemne fasts, indicted by the Church for some publique humiliation, we both doe, and injoyne to abstaine from all conjugall society, so in a desire the more devoutly to celebrate the memory of Gods infinite mercy to mankinde in sending a Saviour into the world for our Redemption, and of the glorious resurrection of that Son of God for our justification, we shall take off our selves from all worldly cares or delights, I see not why it should not be both lawfull and commendable.

But, to say as it is, as the Romanists are guilty of too much scruple in this kind, so too many of our own are no lesse faulty in a careless disregard of the holiest occasions of restraint, which I would to God it did not too palpably appear in the scandalous

dalous carnality of many (otherwise inoffensive) professors. It is a common practise (which I have long wisht an oportunity to censure) that husbands and wives forget one another too soon: Scarce are their consorts fully cold, ere they are laying for a second match; and too few moneths are enow for the consummation of it. Let me be bold to say, this haste hath in it too much not immodesty only, but inhumanity: If we look abroad into the world, wee shall find not among Gods peculiar people only, but even amongst the very Heathens, a meet (and not niggardly) intermission betwixt the decease of the one husband, or wife, & the marriage of another: A whole yeer was found little enough for the wife to mourne for her husband departed: and so is still amongst the very Chineses, though Atheous Pa-

* *Alex.* ab. *Alex.* l. 3. Gen. dier. c. 7. Cod. l. 5. tit. 9.

gans

gans; And by the civill Lawes, a woman marrying within a yeer after her husbands death is counted infamous.

It was no ſhort time that * *Abraham* (though now very old) breathed upon the death of *Sara* (the firſt of wives mentioned as mourned for) before he took *Keturah*; and yet the Hebrew †doctors obſerve that there is a ſhort letter in the midſt of that word which ſignifies his mourning; to imply (ſay they) that his mourning was but moderate: I am ſure his ſonne *Iſaac* (*Gen.*24.67.) was not comforted concerning the death of that his good mother, till three yeers after her deceaſe: At which time he brought his *Rebecca* into that tent which even ſtill retayned the name of *Sarahs*; whereas with us, after the profeſſion of the greateſt deerenеſſe,

* As appeares by comparing of *Gen.* 23. 2. with 25. 1. † אבינחם *Gen.* 23. 2.

the

the old posie of the deaths-ring tells what we may trust to, *Dead and forgotten*: Who can but blush to read that some Heathens were faine to make lawes that the wife might not be allowed to continue her solemne mourning for her husband above 10 moneths, and to see that our women had need of a law to inforce them so to mourn for the space of one? In other Reformed Churches there is a determinate time of months set, untill the expiration whereof widowes (especially the younger) are not suffered to marry, it were more then requisite that these loose times were, here with us, curbed with so seasonable a Constitution: but it were yet more happy, if a due regard of publiq; honesty & Christian modesty could set bounds to our inordinate desires, & so moderate our affections, that the world may see we are led by a better guide then appetite.

CASE.

Case VIII.

Whether it be necessary that marriages should be celebrated by a Minister; and whither they may be valid, and lawfull without him.

IT is no marvell if the Church of *Rome* (which holds matrimonie a Sacrament, conferring Grace by the very work wrought) require an absolute necessity of the Priests hand in so holy an act; but for us, who (though reverently esteeming that sacred institution, yet) set it in a key lower, it admits of too much question whether we neede to stand upon the terms of a Ministers agency in the performance of that solemn action: There are those in these wilde times that have held it sufficiently lawful for the parties having agreed upon the bargain before friends and witnesses, to betak themselves to bed

others have thought this act of conioyning the married persons in wedlock a fitter act for the Magistrate to undertake. And certainely if there were nothing in marriage but meere nature, it could not bee amisse that men and women should upon their mutuall agreement couple themselves together after the manner of brute creatures; And if there were nothing in mariage but meer civility the Magistrate might be meet to be imployed in this service: But now that we Christians know matrimony to be an holy institution of God himselfe: which hee not only ordained, but actually celebrated betwixt the first Innocent payre; and which being for the propagation of an holy seed, requires a speciall benediction; how can we in reason think any man meet for this office, but the man of God, set over us in the Lord; to derive the blessings of heaven upon our heads?

heads? From hence therfore have our wholſom lawes taken a juſt hint to appropriate this ſervice to a lawfull Miniſter only: ſo as what ever private contract may bee tranſacted in corners betwixt the parties affected to each other, yet the marriage knot cannot be publiquely quit by any other hand then Gods Miniſters. And herein certainly wee have juſt cauſe to bleſs the wiſdom both of the Church and State, which hath ſo regulated theſe matrimoniall affairs, as that they are not only orderly but ſafely managed: For doubtleſs were not this proviſion carefully made, the world would bee quite over-run with beaſtlineſs, and horrible confuſion: And in this point we may well give the Church of *Rome* her due, & acknowledge the wiſe care of her Lateran and Tridentine Councells, which have enacted ſo ſtrict decrees againſt clandeſtine Marriages, and

have taken so severe a course for the reforming of many foul disorders in these matrimoniall proceedings; as may be of good use for the Christian world: Had they done the like in other cases, their light had not gone out in a snuffe: As therfore it is generally both decreed and observed (not without excellent reason) in all Christian Churches, that marriages should be solemnized in the publick Congregation of Gods people; so it cannot but be requisite that it should be done by him, who is ordained to be the mouth of the Congregation to God, & the mouth of God to the Congregation; And, as under the Law, the Priest was the man, who must conveigh blessings from God to his people; so under the Gospell who can be so apt for this divine office, as he that serves at the Evangelicall altar? And if all our marriages must be (according to the Apostles charge)

charge) made in the Lord, who is so meet to pronounce Gods ratification of our marriages, as he who is the profest Herald of the Almighty? As it is therefore requisite (even according to the Roman Constitutions) that hee who is betrusted with the Cure of our soules, should besides other witnesses be both present & active in, and at our domestique contracts of matrimony: so by the laws both of our Church and Kingdome, it is necessary he should have his hand in the publique celebration of them. There may then be firme contracts, there cannot be lawfull marriages without Gods Ministers.

Case IX.

Whether there bee any necessity or use of three publishing the contract of marriage in the Congregation, before the Celebration of it; and whether it bee fit that any dispensation should bee granted for the forbearance of it.

THere were amongst the Jewes certain ceremoniall Observations (besides the precepts) which they called the hedg of the Law, and such there cannot want amongst Christians; whose prudence must direct them both to the ordaining, and keeping of some such expedient rules, as may best preserve Gods lawes from violation: Of that kind is this which we now have in hand; This publique and reiterated denunciation of * Bannes before matri-

* Concil. Trident. Sess 24 Decret. de Reformat matrimon.

mony,

mony, is an inſtitution required and kept both by al the Churches of the Roman-Correſpondence, and by all the Reformed; amongſt which, as ours, is moſt eminent, ſo it hath ſtill expreſſed the moſt zeal and care of the due obſerving of ſo wholſom a Rite: ſixe ſeverall * Canons were made in our Provinciall Synod under the authority of King *James* of bleſſed memory in the yeer 1603. to this purpoſe, with as ſtrict charges, reſtrictions and cautions, as the wit of man could in this caſe deviſe; and the late Directory hath found cauſe to ſecond ſo uſefull and laudable a Conſtitution: For the convenience, if not neceſſity, whereof, we need no other argument then the grievous miſchiefes that have followed upon the neglect of this ordinance; that one were enough, which is inſtanced by the Triden-

* Conſtit. 62, 63, 101, 102, 103, 104.

tine * Synod it self; that some leud persons having secretly married themselves to one, take liberty to leave that match, and publiquely joyne themselves to another, with whom they live wickedly in a perpetuall adultry; the frequent practise whereof in those hotter climates we may easily beleeve; when wee see that in our own more temperate region, the feare of hanging cannot hold som off from so foul a sin. Let me add hereunto the late experiments of som odiously incestuous marriages, which even by the relation of our Diurnalists) have by this means found a damnable passage, to the great dishonour of God, and shame of the Church; And hereupon the sad issue of stoln Marriages, wherein Parents have been most feloniously robbed of their Children, are too feelingly known, & irreco-

* Concil. Trid. ubi supra.

verably

verably lamented: But as for unfitneſs and inequality of matches, both for age and condition (to the too late repentance and utter undoeing of both parties) they are ſo ordinary, that they are every dayes Occurrences: And all theſe evils have ſenſibly grown from the want of theſe publique denunciations of Bannes; partly upon the unhappy throwing open of the fence of diſcipline, and partly upon the ſurreption of ſecretly miſ-gotten diſpenſations. And though that forementioned Synod of ours, ſeconded by royal authority, took * the moſt probable courſe that could be conceived (the liberty of thoſe Faculties being continued) for the preventing of theſe abuſes; as the reſtraint of the grant of them by any other, ſave thoſe who have Epiſcopall authority; and ſecurity to bee

* Conſtit. and Canons *ut ſupra*. Can. 101, 102, 103.

given upon good bonds that the coast is cleere from all precontracts, suits of law, and prohibited degrees; that the full consent of parents or Guardians is had; that the marriage shall bee celebrated in the parish Church where one of the parties dwelleth; and lastly the oathes required (of two sufficient witnesses (one whereof known to the Judge) that the expresse consent of parents or Guardians goes along with the match intended; and that there is no impediment from any pre-contract, kindred or alliance: Yet notwithstanding all this prudent caution we have by wofull experience found our offices cheated, facultys corruptly procured, and matches illegally struck up, contrary to the pretended conditions: Whereas all this mischief might have been avoyded, if as no marriage may bee allowed but publick; so those publick marriages

might

might not bee celebrated but after thrice publication of the contract in both the pariſh Churches where the perſons contracted are known to inhabit: For ſo both the Parents of either ſide cannot but be acquainted with the ingagements of their children; and if there be any juſt hindrance, eyther by precontract, or by proximity of blood, or affinity, it cannot bee concealed; that ſo the ſnare of either an unlawfull or prejudiciall matrimony may be ſeaſonably eſchued: To this good purpoſe therefore it is no leſſe then neceſſary (as I humbly conceive) to be both enacted and obſerved, that no marriage ſhould bee allowed of any perſon whatſoever (except perhaps the Peers of the Realme, who are ſuppoſed to bee famouſly known through the kingdom) without a ſolemn publication of their contracts at three ſeveral meetings to the Congregation

gregation assembled; and that there may no dispensation at al be granted to the contrary, upon any whatsoever conditions: And if som pretend bashfulnesse, others feare of malicious prevention (as the Tridentine Doctors suggest) yet it is fit that both should vaile in the inevitable danger of those mischievous inconveniences which follow upon these clandestine matches, and silent dispensations.

Case X.

Whether marriages once made may be anulled, and utterly voided; and in what cases this may be done.

IN what only case a divorce may be made after a lawful marriage you have seen before; now you enquire of the anulling or voiding of marriages made unlawfully: which doubtlesse

doubtlesse may bee done by inst authority upon divers well-grounded occasions: For as it is an indispensible charge, *Those whom God hath joyned together let no man put asunder*; so it no lesse truly holds on the contrary; Those whom God hath forbidden to be joyned, let no man keep together.

Our Casuists are wont to bee very copious in this subject, distinguishing betwixt those impediments which may hinder a Marriage from being made, and those which may undoe and void the Marriage once made. They insist upon many particularities of both kinds; and som, perhaps too many, I shall instance only in those of the latter sort which are unquestionable; whereof the first shall be a miss-prison of the match; when one party is mistaken for another; as when he who by a full contract consented to marry with *Anne*, is

is by a fraudulent substitution put up on a marriage with *Mary*; whether upon the likenes of the woman, or the want of a discerning sense in the man; or by som cunning conveyance of the perfidious contrivers; for certainly it is the consent that maks the marriage; & if the hearts be not joined together by mutuall agreement & affection, the coupling of the hāds is but a ceremony utterly ineffectual; I doubt not but it was in *Jacobs* power to have disavowed the match with *Leah*, whom his father in lawe had deceitfully obtruded upon him being more injurious in changing his wife, then in ten times changing his wages; since his heart was not accessary to that match, which the darkness of the night, and subtlety of a *Laban* had drawn him into.

The like case is in the marrying a bond-woman in stead of a free; a base plebeian in stead of a person of honour:

honour: As then we uſe to ſay that miſ-reckoning is no payment, ſo we may well affirm that a miſ-marriage is no true wedlock; and therfore juſtly to be branded with a nullity.

A ſecond my bee the fœdity and unnaturalneſs of the match; when the parties inceſtuouſly marry within the firſt collaterall degree of Brothers and Siſters; the very mention whereof, even nature it ſelf, not depraved, abhorres: ſo as I cannot but wonder that the Romane Schoole ſhould bee ſo much divided in this point, whiles * *Bonaventure*, *Richardus* and *Durand* hold ſuch a marriage even by Divine Lawe, a *nullity*; contrarily *Aquinas*, *Cajetan*, *Thomas de Argentina* and others (whom *Covarruvias* recites) defend this to be only an impediment by the Canon law, and therfore that it may be in

* *Martin. Alphonſ. Vivald.* Candelab-aureum de Matrim. & partic. de Conſanguin.

the

the Popes power to dispence with so foul a matrimony; Against whom upon better reason, * *Scotus*, and *Dominicus à Soto* prove such marriages by the law of nature to be utterly void and null; with whom all ingenuous Christians cannot but willingly concurre in their judgments.

A third may be the horribleness of a crime committed in the way to a wicked match; and that of two sorts; the one of murther, the other of adultery: The former, when the wife hath conspired with the adulterer to murder her husband, with an intent to marry the murtherer; or in the like case the husband to murther the wife.

The latter when a man living in a known adultry with another mans wife, contracts matrimony with the adultresse in the life time of her husband.

* *Scot.* in 4.d 40. *Sot.* ibid. q. un. art 4.

A fourth, is the indiſſoluble knot of marriage with a former ſtill ſurviving husband or wife; the force whereof is ſuch, as that it fruſtrates and voideth any ſupervening matrimony (except in the caſe ſpecified in the foregoing diſcourſe of Divorce) during the naturall life of the conſorts. Many unhappy, and perplexed caſes have we met withall in this kinde; neither doth it ſeldome fall out, that the husband being confidently reported for dead in the warres, or in travell abroad, the wife after ſome yeers ſtay, and diligent inquiſition, finding the rumor ſtrongly verified by credible teſtimonies, and tendred oathes, begins to liſten to ſome earneſt ſuitor, and beſtowes her ſelf in a ſecond marriage; not long after which, her only true, revived husband returnes, and challengeth his right in that his lawfull wife, pretending the miſ-carriage of letters

letters and messages sent by him in that forced absence. In this case what is to be done? The woman hath cast her self upon the danger of a Capitall law, except shee have expected the time limited by statute; or if she escape, one of the husbands is to seek for a wife, whom both may not enjoy. Doubtless the second marriage is by Ecclesiasticall authority to bee pronounced, as it is, null; which indeed never had any true right to be: and the first must be content to swallow its own inconveniences.

A fifth, may be a violent enforcement of the match: when a woman is upon fear of pain, or death compelled to yeeld her self in marriage, and is not perswaded, but affrighted into the bonds of wedlock: surely this is rather a rape then a matrimony, and therefore, upon utter want of consent, a nullity.

A sixt may be a preceding, irremediable

diable impotency, or incapacity of marriage duties; whether naturall, or advantageous; whether by way of perpetuall maleficiation, or casualty: I say, preceding; for if any such disability be subsequent to the marriage, the nullity is avoided; But if the persons find in themselves beforehand such remedilesse incapability of a marriage estate, they shall be highly injurious to each other, and shall fouly abuse the ordinance of God, in their entring into such a condition: for it is apparent, that the main ends of mariage are herein utterly frustrate; which were by Gods appointment, the propagation of mankinde, and the remedy of incontinency; neither of which being attainable in such a defective estate of body, justly is such a match pronounced a nullity.

But here I cannot but take occasion to commend the modesty of the women

men of our nation; amongst whom, there are so rare examples of suits in this kind, prosecuted in our Ecclesiasticall Consistories; it is not to be doubted but there are many defects of this nature to bee found every where, yet scarce one in an age offers to complain and call for redresse: so as it seems they are willing to smother all secret deficiencies, in a bashfull silence; whereas those of other warmer regions impatient of the wrongs of their conjugall disappointments, fly out into open contestations, and feareleslly seeke for those remedies which the lawes provided in such cases will allow them. Certainly the merit of this modest temper is so much the greater, by how much more it is concealed from the world; and those of either sexe that are content to bite in their hidden grievances of this kinde, are worthy of double honour

honour from thoſe Conſorts, whoſe injurious infirmities they both have not diſcloſed, and ſuffer in ſuppreſſing.

A D-

ADDITIONALS.

Certain Cases of doubt, besides the formerly published, having been proposed to me, and received a private solution; I have thought fit upon the addresse of a second Edition, to adjoyn them to their fellows, for the satisfaction of any others, whom the same Cases may concern.

CASE I.

Whether a Marriage consummate betwixt the Uncle *and* Neece *bee so utterly unlawfull, as to merit a sentence of present separation.*

RESOLUTION.

WHat prodigious Matches have beene of late made, and are still continued, upon advantage taken of the unsettledneſſe of the times, I had rather silently

silently lament, then openly proclaim to the world: Such as are not capable of any Apology, call for our blushing and teares; but there are some others which dare stand upon the termes of defence. Such is this which you have here propounded on the behalf of your friend, whom it seemes a mis-learned Advocate would faine bear up in a course altogether unjustifiable; that cause must needs be desperately ill, that can find no mercenary abettors: His offensive marriage with his Neece is hardned by a sophisticall pleader, whose wit and skill is so ill bestowed in this case, that I wish his tee might be perpetuall silence: but when hee hath made use of his best art to so bad a purpose, those colours of defence, wherewith hee thinks to daub over so foule a cause, will prove but water-colours, which shall easily be wash'd off by this present confutation.

It

It was lawful, he saith, before the Leviticall Law, thus to Match: So were worse Marriages then this: Let him tell me that *Cain*, and *Enoch*, and *Seth* married their owne Sisters, as *Saturne* also did, by the report of *Diodorus Siculus*; Necessity made it then not unlawfull: It is a just rule of* law; Those things may not be drawne into precedent, which have been yeelded upon meer necessity; as we use to say; Necessity hath no law, so it can make none. Afterwards, as mankinde grew, nature it selfe taught men to keep further aloofe from their owne flesh, and still remoteneſſe of distance enlarged it selfe with time.

Abraham (saith hee) married his neece *Sarah*, *Gen.* 11.29. (if at least *Sarah* were *Iscah*) *Nahor* his neece *Milcha*, *Amram* his Aunt *Jochebed*,

* *In Argumentum trahi nequeunt, quæ propter necessitatem sunt concessa.*

and these not without a large blessing upon the bed. Let him tell me also, that *Jacob* married two Sisters, and conversed conjugally with both (which were now shamefully incestuous) yet was herein blessed with the issue of six of those *Patriarchs*, who were the root of those glorious stemmes of *Israel*. If we should speak most favourably of these conjunctions, to ranke them under *malum quia prohibitum*, it must needs follow, that till the prohibition came, they could not be censured as evill: Though good Authors make it justly questionable, whether these fore-alledged marriages should deservedly bee charged with a sin, or excused by Gods extraordinary dispensation, in the meane time the blessing was to the person, not to the act, even *Lots* incestuous copulatio with his daughters sped well, two famous nations sprang thence, & of one of them, the

the gracious progenitrice of the Saviour of the world; Yet this is no plea for the allowance of that monstrous conjunction. After the law, one justifiable example were worth a thousand before it.

Lo, good *Caleb* (saith he) married his daughter *Achsah* to his brother *Othoniel*. *Joshua*. 15. 16, 17. Indeede, this case comes as home to the businesse as it is farre off from the text. See whether mes-prision of Scripture may mislead us: a man that understands nothing but the english, or vulgar latin, may easily run into so foul an error; weigh but the place well, & you will soon find the fault without me; *Othniel* the son of *Kenaz*, *Calebs* brother, tooke *Kerath-Sopher*, and *Caleb* gave him *Achsah* his daughter to wife; The English wanting cases expresses it doubtfuly, it will be cleare in the Latin, as *Montanus*, and *Pagnine*, two great Masters

of the Hebrew in their *Interlineas*, read it, *Othniel filius Kenaz, fratris Calebi*, *Othniel* the sonne of *Kenaz*, which *Kenaz* was *Caleb's* brother, both the Hebrew & Chaldee cleare that sense: So the Septuagint, as *Emanuel Sa* also urges upon that place *Judg.* 1.13. expressly say that *Kenaz* was the brother of *Caleb*, and not *Othniel*; wherein yet I cannot much blame an unballanced judgement, whiles I find the Septuagint contrary to themselves: For in *Josh.* 15.16 they say *Othniel* was *Calebs* younger brother, In *Judg.* 3.9. they say, *Kenaz* the father of *Othniel* was so, for which there is no excuse, but the large sense of a brother in the Hebrew, *We are brethren*, saith *Abraham* to *Lot*, yet he was *Lots* uncle: so was *Kenaz* a progenitor to *Othniel*; for *Caleb* is stiled the son of *Jephunneh* the *Kenezite*, *Josh.* 14.14. & *Num.* 32 12. The case was only this, *Kenaz* was

was the anceſtor of *Caleb*, and one of the ſame name was his brother, the father of *Othniel*: what can be more plain then 1 *Chron.* 4. 13. *And the ſons of Kenaz, Othniel & Seraiah*; So as if wee take this moſt ſtrictly to the letter, it implies nothing but the marriage of two cozens german, *Othniel* the ſon of *Kenaz*, and *Achſah* the daughter of *Caleb*, brothers children, as *Bucer* upon the place, *Melanchton* in his Tract *De Conjugio, Junius*: and indeede, who otherwiſe? And now by this time you ſee what a poore ground this is to build upon, rather, you ſee a caſtle, not built on the ſand, but in the ayre; meer miſconceit.

But, ſaith the Advocate, this marriage is no where directly forbidden in the Law; I muſt tell him it is but a meer ſhuffle to ſtand upon the terms of a direct prohibition, when there is one no leſſe forceable & convictive

Two wayes may ought be effectually forbidden in the law, Either in plain expression of terms, or in clear implication of sense: surely, that is rather more in the law which is meant irrefragably, than what it verbally expresseth: now, however this be not in the letter of the law, yet in the sense it is the same law that forbids the nephew to marry the aunt, doth *eadem operâ*, forbid the uncle to marry the neece. In regard as of neerness, yea identity of blood, the case is the same: however, some inequality may be conceived in respect of government & subjection. And if upon some oeconomicall termes, it be more unfit for a Nephew to marry his Aunt, than for an Uncle to marry his Neece; yet in regard of blood and that bodily conjunction, which God principally aymes at in this prohibition, what difference can possibly bee conceived? Nature hath

made no other distance betwixt the Nephew and the Aunt, than betwixt the Neece & the Uncle: or if there be any, they must be sharper eys than mine that can discerne it. God himself (me thinks) hath put this out of doubt; the reason wherewith hee backs his command is irresistible; The Nephew shall not marry the fathers sister; why so? *For she is thy fathers neer kinswoman*, v. 12. Lo it is the neerenes of blood that makes this match unlawfull, not respect of civil inequality; Where the blood then is equally neere, the marriage must be equally unlawfull.

That rule of law which is pretended, *in prohibitoriis, quicquid non prohibetur, permittitur*. What is not forbidden, is permitted, had needs of a fair construction. Indeed, that which is not forbidden either in words or in necessary analogy & implication of sense, is supposed to be left at large,

But what place hath this Axiome in a case not less really forbidden than the expressed? And if wee should strictly follow the letter of this Maxime, it would lead us into *Sodome*: since there are marriages not specified, which would be monstrously incestuous, & such as honesty would blush to mention, as shall appeare in the sequele.

Neither is there any more force in that other, *In pœnalibus non fit extensio*, That penall lawes should not bee stretcht further then their words import. Certainly in som sense, I know no law that is not penall: but why this law, *Thou shalt not marry thy Aunt or Neece* should be rather penal, than, *Thou shalt not commit adultry*, I know not; I am sure learned *Zanchius* accounts these of the 18. of *Leviticus*, equally morall: and *Bucanus* holds them to be against the law of nature.

And if in humane laws this axiom may

may challenge a place, yet in the royall laws of our Maker, where, under one sin mentioned, all the species & appendances, and the whole claim of that wickednesse is wont to be comprised, doubtlesse it is utterly unsufferable: Neither is here any extension of this prohibition beyond those limits which God hath fixed in the undoubted sense of his law. In the seventh Commandement, nothing is expressed but *adultry*, shall we therefore say neither *fornication*, nor *pollution*, nor *sodomie* is there forbidden? were not this to destroy that lawe, which God makes to be spirituall, and to open the flood-gates to a torrent of licentiousnesse? surely, it is easy to observe that Gods Spirit no lesse meanes that which he pleaseth to suppresse. The Psalmist sayes, *Promotion comes neither from the East, nor from the West, nor from the South, Psal.* 75. 6. Shall we therefore say, Isis

from the North? Is not that coast equally excluded, though not expressed? It is too much boldness to hold God too strictly to syllables, when it is easie to determin what he meant to imply? These rules then are useless? Let me see now if the Advocat can as easily shake off one or two rules of law, which I shall return upon him in lieu of his. *Is committit in legem, &c.* Hee wrongs the law who keeping close to the letter, strives against the intent and purpose of the law. And that other not unlike, *In fraudem legis facit qui salvis verbis legis sententiam ejus circumvenit*, If this be not the case in hand, I shall professe to know nothing.

From rules, let us look to authorities, It is directly maintained (hee saith) by the Canonists and Schoolemen; but what is it that is so maintained? Not this match (let no man think so) but that proposition, *viz.*: that

that this match is no where directly forbidden in Gods law, If wee take it of expresse terms, no wise man ever denied it, not Canonists & Schoolemen only, or those few named Authors, but all reasonable men concurre in this truth; what needs a citation of some, where all agree? But if we take it of the necessary & cleare sense of the law by just Analogy and infallible implication, now, none of the forecited, or any other orthodox Authors will deny the certaine and indubitable prohibition of this marriage. How well the rest will speed, judg by their fore-man, *Tho. Aquinas* who expresly determines it a false position, that those are joyned together by God, who match within the fourth degree, whereas his is in the third. Not to say how stifly *Peter Lombard* urges the unlawfulness of marriages to the very seventh degree, *vel quousq; parentela possit agnosci*, even

as

as farre as the kindred may bee discerned, following herein Pope *Gregory* and *Nicholas*: To shut up short, none of all his cited Authors dare be any other then professed enemies to this match; no lesse, then the most zealous Commissioner of that now abolished Court, whose late sentence is upon Record enough to this purpose.

As for *Lyra*, who is trailed in here, and cited strongly in *Othniels* Case, what shall I say? It grieves my soul to see any well-minded Christian so abused by mis-information: This author hath thus *Turpitudinem sororis, &c.* Thou shalt not uncover the nakednesse of thy Fathers sister, or thy Mothers sister (*& eodem modo*) and in the same manner is forbidden the marriage betwixt the brother, and the daughter of the Aunt, for it is the same degree, so *Lyra*: Nothing can be more peremptory against this case

in

in favor of which he is alledged.

This would be the iſſue of all the reſt, if it were worth the while to examin them, in that, which yeelded, nothing advanceth the cauſe of the producer. They are all as profeſſed enemies to this match as my ſelfe; only they deny an expreſſe mention of this cauſe, which was never either thought needfull, or intended to be pleaded.

For the Proteſtant Divines which are cited to give teſtimony to the non-prohibition of this marriage, I muſt cry ſhame upon thoſe falſe hands which have ſo palpably abuſed both your friend & the Authors: Let me give but a taſte of ſom, *Melanchon Zanchius*, *Bucanus*, who are ſaid to allow the match, by admiting only the degrees mentioned to bee prohibited; No place is inſtanced, *verſatur in generalibus*, You know the word, but let your eyes be judges of

their

their opinion: *Melancthon* mentioning the marriage of *Abraham* and *Sarah*, in the second degree: *Hoc gradu* (saith he) *in linea inæquali &c.* In this degree in an inequall line, marriages are forbidden by Gods law, because God doth universally ordaine a greater reverence to be yeelded to a superior degree, then to an equall: It is the very case in hand, which *Melancthon* thus sentenceth: For *Zanchius*, he citing the Text of *Levit.* 18 13. Thou shalt not uncover the nakednesse of thy Mothers Sister; adds, *ergo nec mater teram, &c.* Therfore no man (saith he) may marry his Aunt, and that charge which he gives concerning the Aunt would God have to bee understood also of the Uncle, which is the Fathers brother, or the Mothers brother, whiles he adds a reason of the prohibition, For she is the neer kinswoman of thy Father or Mother:

Thus

Thus *Zanchius* in his book *de Operibus Dei*. Lib. 4. *de Sponsalibus*, who absolutely condemnes this matriage as incestuous, and indispensable.

Bucanus, moving the case of *Abrahams* marriage with *Sarah*, and *Amrams* with *Jochebed* &c. Leaves it in doubt whether these men were (as the times stood) particularly dispensed with by God, or whether they sinned in thus marrying, even before the law, against the law of nature, by which he holds these matches utterly prohibited; With what forehead then could any Scholar obtrude these falf allegations upon an honest client, whether to draw his foot into a snare, or to keep it there, under pretence of favoring what they professedly oppose.

As for the moderne Jewes, to whom he stretches out his hand for succour, it matters little what they now teach or do; they are not more

with

without God, then without honesty, or credit; Their opinions are fabulous, their judgement frivolous, and their practise not worth our knowledge or regard.

I rather descend to the resolution of our owne Church; That our ever honoured Mother hath passed her condemnatory sentence upon this marriage in her ratification of that Orthodox and just Table of forbidden degrees, set forth by authority under Archb. *Parker*, what doubt we now? Do we acknowledg the Oracular Voice of our dear and holy mother the Church of England, and yet question whether we should obey it? Certainly in a case of Conscience, a dutifull son (mee thinks should rather hold fit to follow the sacred determination of the Church, then the municipall Acts of the civill state. It is an ill office of those that would set Church and State, Canons and Statutes

cutes together by the eares even in these points wherin they are perfect friends.

The statute of 32 of *Henry* 8. c. 38. intending to marre the Romish market of gainfull dispensations, and injurious prohibitions, professeth to allow all marriages that are not prohibited by Gods law, such is this in hand, prohibited, though not in the Letter, yet in necessary inference and interpretation. The Canon 99. of 1603. hath thus: No person shall marry within the degrees prohibited by the lawes of God, and expressed in a Table set forth by authority, in the yeer 1563. and all marriages so made and contracted shal be adjudged incestuous and unlawfull.

What scruple can arise hence? here is a perfect harmony betwixt Statute and Canon. It is a meer Cavill (no better to take And for Or, as if the meaning were, that all degrees, whe-

whether prohibited by the lawe of God, or expressed in that Table are forbidden: This is a foule straine both to Grammer and to the sence and scope of the Canon, which plainly intends to aver that all those degrees prohibited in that table are also forbidden by the laws of God. A truth so certain, that if either self-love, or love of gaine did not betray the eye, it is a wonder how it should abide a contradiction.

It is observable that neither statute nor canon speak of an expresse prohibition in Gods law, And the Canon purposely distinguisheth the termes prohibited by Gods law, and expressed in the Table, as justly supposing there may be as strong a prohibition in a sense implyed, as verbally expressed: Else, if our Lawes (as is pretended) should give allowance (which God forbid) to any marriages not expressly *in terminis*, for-

forbidden, wee should have strange and uncouth mixtures.

God by *Moses* expresly forbad the uncovering the nakednes of Father and Mother; he expresseth not the nakednesse of Son and Daughter; he expresly names the nakednesse of the Fathers wife, he expresseth not the nakednesse of the Mothers husband: He expresly names the nakednesse of thy Sister, he expresseth not the nakednes of thy Brother, he expresseth the nakednesse of thy Sons Daughter, he expresseth not the nakednesse of thy Daughters Son; he expresseth the nakednesse of thy Fathers wives Daughter, he expresseth not the Mothers Husbands Sonne; he expresseth the Fathers Sister, not the Mothers Brother: He expresses the Daughter in law, not the Son in law. So as by this Rule, if it should be carried only by meer verball expressions, a woman might marry her

dead Son

Son in law, the Nephew might marry his great aunt, the neece her great uncle, the Daughter might marry her Mothers husbands Sonne, the Grand-mother might marry her Daughters son, the Daughter might marry with her Mothers Husband; Were these things to be allowed, the world would be all *Sodome*. These things therefore are of necessity included in the law by a clere Analogy, no lesse then if they had beene expressed.

But have there been, as hee saith, precedents of this match? I am sory to heare it, surely, the more the worse and the more need to redresse it, the addition of this, if neglected, would help to strengthen an ill claim.

Cozens-german he saith, have beene allowed to marry; What is that to the present case? The difference is as much as betwixt a Nephew and an Uncle; The Uncle hath

hath too much of the Parents both right, and blood, to challenge an equall claim with a Cozen.

In the shutting up, it pitties me to see your worthy Friend driven to this plea; and like a drowning man to snatch at so small a twig: *Being done* (he saith) *it ought not to be undone*. Alas, the Canon is peremptory, It is incestuous and unlawfull; what plea is there for continuance? Speak not therfore of either connivence or dispensation; This match is only capable of a late, but much wished repentance on the Offenders part; and a just diremption on the part of the Judges.

CASE.

Case. II.

Whether it be lawfull for a Man to marry his wives Brothers widow.

AMongst all the heads of Case-Divinity, there is no one that yeeldeth more scruples, then this of Marriage, whether wee regard the qualification of the Persons, or the emergency of actions and events. It is the lawfulness of this match that you inquire after, not the expedience and I must shape my answer accordingly.

It hath been the wisdom and care of our godly and prudent Predecessors, to ordaine a Table of all the prohibited degrees to be publiquely hang'd up in all the severall Churches of this Nation; to which all commers might have recourse for satisfaction: This Catalogue you have perused, and find no exception of

of the case specified, I know no reason therfore why you may not conclude it not unlawfull.

The question of the Expedience would require another debate, doubtless, in all cases of this nature, it must needs be yeelded that it were more meet and safe (since the world yeilds so large a latitude of choice) to look further off; a wise and good man will not willingly trespasse against the rules of just expedience; and will be as carefull to consider what is fit to be done, as what is lawfull; but that comes not, at this time, within your inquiry.

Whiles therfore I give my opinion for the lawfulness of this Marriage with the Relict of the wives brother, I doe no whit clash as you suggest with the judgement of *Beza*, and Master *Perkins*, who professe their dislike of such copulations: I shall as readily cry them down for unmeet, and

and inconvenient, as those, that with too much boldnesse come over neere to the Verge of a sinfull conjunction, but for the not unlawfulnesse of this match, I did upon the first hearing give my affirmative answer: and the more I consider of it, I am the more confirmed in that resolution.

That universal rule mentioned by you, as laid down by those two worthy Authors, must indure a limitation, *Cujus non licet inire nuptias, ejus nec conjugi licet*; that there is the same degree and force of relation of a third person (in the case of Marriage) to the husband and to the wife; so as proximity of blood in the one, should not be a greater bar then the same proximity of alliance in the other; Otherwise, many more copulations will fall under censure, then common practise will condescend unto; and that ground of, *uxor pars*

quadam

quadam virl, The wife is as a part of the husband, as it holds not in naturall relation at all, so not in all conjugall, as might be too easily instanced in divers particulars.

And if there were not som difference in these relations, those second persons which are interessed in the Husband or Wife, might not come neer to the next in affinity to them; For example, my Brother may not marry my Sister, therefore by this rule, he might not marry my Wives Sister, and so it should bee unlawfull for two Brothers to marry two Sisters, then which nothing is more ordinary or lesse obnoxious to disallowance.

That generall rule therefore, must be restrained necessarily to the first ranke of affinity; if we descend lower it holds not. For further explanation, our Civilians and Canonists are wont to make two kinds or degrees

of Affinity, the one primary, the other secondary. In the first is the affinity between the husband and the Cozens of blood to his wife, or *è conuerso*, which indeed is justly held no lesse for a barr of marriage then his own naturall consanguinity, for that is an affinity contracted upon interest of blood, by vertue of that entire union betweene Man and Wife, whereby they both become one flesh. The Secondary affinity is that wherein there is another person added moreouer to that first kinde now mentioned, the affinity arising only from the interest of an affinity, formerly contracted, not from consanguinity, and this is not so binding as either to hinder a marriage to be contracted, or being contracted, to dissolve it.

In this rank are the brothers wife and sisters husband, and therefore, upon the decease of the brother and sister, the husband of the sister deceased,

ceased, and the wife of the deceased brother may marry together, as Dr. *Nicholaus Everhardus* out of *Richardus de Media Villa*, and *Panormitan*, hath cleerely determined*; Of this kind is the marriage now questioned which therfore doth not fall within the compasse of the prohibition, *Secundum genus affinitatis, &c.* The second kind of affinity, which is by a Person added unto the first kinde is no bar to Matrimony; And with this judgment I find no reason why I should not concur; but if any man think that he sees just ground to entertaine a contrary opinion, I prejudge him not, but modestly leave him to the freedom of his owne thoughts.

* Consil. Matrimonial. Germanor. Consil. 5.

Case III.

Whether an incestuous Marriage contracted in simplicity of heart betwixt two Persons ignorant of such a defilement, and so farre consummate as that Children are borne in that wedlock, ought to be made known and prosecuted to a dissolution.

IT is a question (as it may be put) full of doubt and intricacy, Parallel whereunto, and eminent in this kind, was that case, which I had long since from the relation of *M. Perkins*; and since that, have met with it in the report of two severall German Authors.

The case thus: A Gentlewoman of great note in those parts, being left a Widow, had her son trained up in her house; who now having passed the age of his puberty, grew up as in stature, so in wanton desires, earnestly

ly ſolicuting her Chamber-maid to his luſt; ſhe had the grace not only to repell his offers, but being wearied with his wicked importunity, to complain to her Miſtreſſe, of his impetuous motions: The Mother out of a purpoſe to repreſs this wild humor in her Son, bids the maid, in a ſeeming yieldance to make appointment the night following with him, at which time ſhee would change beds with the maid, & ſchoole the young man to purpoſe. This being accordingly done, the Devil ſo farre prevailed with the Mother, that in ſtead of chaſtiſing, ſhe yeelded to the luſt of her Son, and by him conceived a Daughter: & now finding her ſelf to grow big, for the hiding of her ſhame, ſhe retired ſecretly to a remote part of the country, where ſhe unknowne left the burden of her wombe, and took order for all care & ſecrecy of education: After ſom

yeeres the Mother thinks fit to call home her concealed issue, under the pretence of a kinswoman, and gives her such breeding in her house, as might become the Child of a friend. The maid grew up to such comelinesse, both of person and behaviour, that the Sonne, now grown a Man, fell into passionate love with her, & in short, married her; little thinking that hee was now matched with his owne Daughter, begotten by him of his own Mother. They lived lovingly and comfortably together, and had divers children betwixt them. Only the Mother, who was alone conscious of this monstrous copulation, began to finde an hell in her bosom, and in a deep remorse, made the case, at last known to some learned Divines of that time, who bestowed many serious thoughts upon so uncouth a businesse, and finally agreed upon this determination. That

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all circumſtances throughly weighed, the penitent Mother ſhould after a ſound humiliation ſecretly make her peace with God, for ſo foul and prodigious a ſin; but that the knowledge of the horrible inceſtuouſneſs of this match, ſhould ſtill and ever, be concealed from the yong couple, who thought of nothing but a faire and honeſt legality in this their conjunction.

The deciſion of this point comes ſomwhat home to yours, to ſpend my opinion therefore in this caſe, I find no reaſon, all things conſidered, to vary from their judgment.

I ſay then, that the Mothers ſinne was not more hainous in yeilding to ſo abominable an act of inceſt with her Son, then in ſmothering the ſeaſonable notice of it for the preventing of a worſe inceſt with her Daughter; for that firſt act of her inceſt was tranſient, but this inceſt which was

occasioned by her silence was permanent, and derivable to her posterity: She ought therfore, though to her perpetuall shame, when she saw an inclination in her Son, to so foully unnaturall a match, to have forestalled it by a free confession, and to have made him sensible of so odious a procation: Which not being done, it must needs be said, that, as the first act of the Sonne was a voluntary fornication, but an involuntary incest; so this incestuous copulation of the Son with the Daughter, was involuntary in them both; and there cannot be an actuall sinne, wherein there is not a consent of the will.

On the one side, it is shamefull to thinke that so grievous a sin should passe without som exemplary censure, & that so foule blood should be propagated to succeeding ages, for want of the timely intervention of

a vindicative authority; but on the other ſide, it would be well conſidered what miſerable inconveniences, yea miſchiefs would follow upon ſo late a diſcovery; Firſt, all honeſt hearts are put into a juſt, but unprofitable horror, to think that ſuch a flagitious wickedneſs could be committed; Then the Mother, who had rinced her ſoule with a fountain of teares, for ſo hatefull a miſcarriage, and reconciled her ſelf to that God, who was the only witneſs of her ſin, ſhould bee ſo late expoſed to the unſeaſonable ſhame of that world, w^ch^, never was privy to her offence.

As for the yong couple thus prodigiouſly conjoyn'd, how could they chooſe, upon the too late notice of their ſo deplorable condition, but run mad for anguiſh of ſoule, and weare out the reſt of their dayes in ſhame and ſorrow: And for the children born to them in ſo deteſta-

ble a wedlock, whom they had formerly beheld with complacence & comfort, as the sweet pledges of their conjugall love, how must they now needs look upon them, as the living monuments of their ignominy; and loath them as the most basely begotten imps of a worse then beasti all copulation. And when riper age should bring that unhappy of spring forth into the world how should they be every where pointed at, & hooted after as som strange aberrations of nature; all which are avoyded by this secrecy.

But if on the other side you shall reply that this one evill is more, then equivalent to all these; that in the meane time, these parties live in a continuall Incest, and traduce it to following generations; I must put you in minde to distinguish betwixt the state of Incest, and the Sin of Incest; It is true they live in a state of In-

Incest, but, from the sin of Incest they are excused by an ignorance, altogether invincible; an ignorance both of the originall fact, & of their mutual relations; for it is to be supposed, that had they had the least intimation of the natural interest of father & daughter, they would with much indignation have defied so foul a cõmixture, which even brute creatures (if wee may beleeve histories) have by the instinct of nature abominated, & upon after knowledg, revenged.

And if any light of knowledge had broken forth unto the parties, of that condition wherein they stood, then to have continued under that state of Incest, but an houre, had been damnably sinful; now all those inevitable consequences of shame & horror must have been sleighted & forgotten, and must have shut up in a sodain dissolution.

But as there are many degrees of Inceſt, and the ſin is ſo much more, or leſſe haynous, as the parties are neerer or more remote; I perceive the caſe intimated by you, concerns a lower ranke of inceſtuous copulation, namely, an inceſt ariſing from a mans carnall knowledge of a perſon too neere in blood unto her, whom he afterwards marrieth; The fact known only by one, who now doubts whether he be not bound to reveale it: And why not ſooner, when ſo faulty a match might have been prevented? why ſo late, when the remedy intended, would bee as noxious as the diſeaſe? Why at all, when there is no neceſſity or uſe of the revelation? This queſtion ſtarts another more univerſall, how farre we may or ought to mak known the ſecret ſin of another? Doubtleſſe to prevent ſom enormous act, which may follow upon our ſilence; or upon

on the urging of lawfull authority, when we are called to give evidence concerning a fact queſtioned; Or to antevert ſome great danger to the publique, to our ſelves, to our friend, we may, & muſt diſcloſe our knowledg of a cloſs wickedneſs; Or if the act be ſo haynouſly flagitious, and redounding to ſo high diſhonour of God, as that our Conſcience tells us ſhall participate of this ſinne in concealing it; our holy zeal ſhall herein bear us out in a juſt accuſation; although in this caſe, heede muſt be taken, that our ſingle crimination may be ſo carried and made good by circumſtances, that it draw us not into the perill of a ſlander; But, without theſe, I cannot ſee, that the revealing of a ſecret ſinne, can be conſtrued any otherwiſe than an act of Detraction; than which, nothing can be more odious and prejudiciall to humane ſociety: Wee have learn'd from

from *Aquinas* that there are eight wayes of this hatefull practise; whereof foure are direct; the rayſing of a falſe crime, the amplifying of a true crime; the diſcloſing of a crime ſecret, and the ſiniſter conſtruction of anothers fact. To theſe I muſt adde, that even where the act is ſuch as challengeth a revelation, the time may bee unſeaſonable and paſt the date. You know that the notice of treaſon, if too long ſmothered, drawes the concealer into danger: and in this caſe, though there be no perill in the ſilence, yet there may be injury: Shortly, this ſinne, if ever, ſhould have been ſo early made known to the party concerned, as might have prevented the making up of a match ſecretly ſinfull; and have convinced the agent of a foule illegality, whereof he was ignorant. But now thus overlate, would break out to an unprofitable vexation,

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ſince this crime which might juſtly have hindred the marriage from being contracted, ought not to have the force, after ſo long intermiſſion and ſucceſſe of an intervenient wedlock, to diſſolve it. The time was, when the Miniſter in a ſolemne preconization, called you either *then to ſpeake*, or *for ever after to hold your peace*: had you then ſpoken it might have been conſtrued as zeale, now, not to hold your peace, will bee interpreted no better then malice.

AN

AN ADVERTISEMENT TO THE READER.

I Have beene earneſtly moved by ſome judicious friends, to goe on with this ſubject, and to mak up a compleat body of caſe-Divinity, both practicall, ſpeculative, and mixt; whereof I confeſſe there is great defect in

in our language; But I remember the talke which Plutarch *reports to have been betwixt* Craſſus, *and King* Deiotarus, *two old men, but great undertakers.* Craſſus *jeeres* Deiotarus *for laying the foundation of a new City in his decayed age;* Deiotarus *twits* Craſſus *for going about, in the like age to ſubdue the warlike Parthians; both juſtly ſuppoſing our decrepit age a juſt diſſwaſive from*

* *Plut in vita Craſſi*

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ventwring upon great enterprises; Although herein I should not want a worthy precedent, that honour of Navarre, Martinus Azpilcueta, *who at ninty yeares finished the fourth Edition of that his elaborate Manuall of Cases of Conscience. But as for me, I am sufficiently conscious of my owne inabilities for so long, and difficult a worke. Onely this, I shall willingly profess, that such scruples as I meete with in my way, I shall not*

allow

allow my selfe to balke, and shall leave the answers upon the file. In the meane time, let me incite some of our many eminent Divines, whose wits are fresh, and bodies vigorous, to go through with so usefull a worke; Many yeares are passed since my ancient and learned Colleague Dr. Ralph Cudworth told me that hee had with much labour finished that taske, and devoted it to the presse, which yet sleeps in some private hands. It were happy

happy if his worthy Sonne, the just heyre of his Fathers great abilities, would make strict inquiry after it, and procure it to the publique light, for the common benefit of Gods Church both in the present, and succeeding ages.

The End.